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The Gazette of India.

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CALCUTTA, SATURDAY, JANUARY 1, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th December, 1880, and is hereby promulgated for general information:—

ACT No. XVI OF 1880.

An Act to regulate the Traffic on the Madras Irrigation and Canal Company's Canal.

Preamble.

WHEREAS, by the twenty-seventh clause of an Indenture made on the third day of June, one thousand eight hundred and sixty-three, between the Secretary of State for India in Council of the one part, and the Madras Irrigation and Canal Company (hereinafter referred to as "the Company") of the other part, it was, amongst other things, provided that the Company should be authorized and empowered to charge such tolls for navigation, and such fares or rates for the conveyance of passengers, animals and goods, as should not exceed the rates, tolls or fares which should be defined and sanctioned by an Act of the Indian legislature; and that the Company should not in any case charge any higher tolls, fares or rates whatsoever; and whereas it is expedient to define and sanction, for the purposes of the said clause, fares and rates for the conveyance of passengers, animals and goods;

And whereas it is also expedient to empower the Company to make rules for the conveyance of passengers, animals and goods upon, and the use, management and working of, its canal; It is hereby enacted as follows:—

Short title.

Commencement.

1. This Act may be called "The Madras Irrigation and Canal Company's Act, 1880;" and it shall come into force at once.

Fares and rates for conveyance of passengers and goods.

2. The fares and rates specified in the schedule hereto annexed shall be deemed to be the fares and rates defined and sanctioned for the purposes of the said clause.

Company empowered to make working rules for its canal.

3. The Company may, from time to time, make rules for the following purposes, that is to say:—

(*a*) for licensing vessels (other than those of the Company) to navigate the canal and for registering vessels so licensed and denoting upon each its carrying capacity;

(*b*) for fixing the maximum number of passengers or animals, and the maximum amount of goods, which vessels navigating the canal may carry; and

(*c*) generally for regulating the traffic upon, and the use and management of all vessels upon, the canal.

Penalty for breach of rules.

4. Any such rule may contain a provision that any person committing a breach of it shall be liable to a fine which may extend to fifty rupees, or, in default of payment of such fine, to simple imprisonment for a term which may extend to one month.

Notification of rules.

5. All such rules shall, when sanctioned by the Governor of Fort St. George in Council and published in the *Fort St. George Gazette*, have the force of law.

Power to cancel rules.

The said Governor in Council may at any time cancel any such rule.

Copy and translation of Act, &c., to be shown at stations and on vessels.

6. A copy of this Act and the rules made hereunder, and of the Time-table and Tariff of Charges which may from time to time be observed for the Company's vessels navigating the canal, shall be exhibited, both in English and in Telugu, in some conspicuous place at each station of the canal, and

in each vessel employed by the Company in conveying passengers, animals or goods over the canal.

Penalty for failure to exhibit copy and translation as required by section 6.

7. Any servant of the Company in charge of any such station or vessel at or in which the provisions of section six are not complied with shall be punished with fine which may extend to ten rupees; and the Company shall forfeit to Government the sum of fifty rupees for every day during which such provisions are not complied with at or in any such station or vessel.

Place of trial.

8. Any person committing any offence against this Act or the rules made under it shall be triable for such offence at any place at which he may be, or which the Governor of Fort St. George in Council may, from time to time, by notification in the official Gazette, direct, as well as in any other place in which he might be tried under any law for the time being in force.

Saving of prosecutions under other laws.

9. Nothing in this Act shall be deemed to prevent any person from being arrested, prosecuted or punished under any other law for any act or omission which constitutes an offence against this Act or the rules made under it:

Provided that no person shall be punished twice for the same offence.

THE SCHEDULE.

(*See section 2.*)

Fares and Rates.

PASSENGERS.

	Pies.
First class, per passenger, per mile or fraction of a mile ...	14·4
Second class, per ditto ditto ...	5·6
Third class, per ditto ditto { Mail (fast)	3·2
Third class, per ditto ditto { Ordinary	2·0

ANIMALS.

	Pies.
A horse or mule taken singly, per mile or fraction of a mile ...	14·4
	Annas.
Cattle, horses and mules, per 10 or fraction of 10, per ditto ...	6·0
Calves needing only half the space of a cow, to be reckoned as half.	
Sheep, goats and pigs, per 60 or fraction of 60, per ditto ...	6·0
Asses, half the rates for horses.	

N.B.—Dogs if conveyed at all will not be charged for, no accommodation being provided for them.

Elephants and camels will not be conveyed at all.

GOODS.

Heavy Goods, i.e., Goods weighing above 180 lbs.

	Pies.
First class (which includes all articles for the time being comprised in the special and first classes, Madras Railway) per ton, per mile or fraction of a mile ...	7·2
Second class (which includes all articles for the time being comprised in the second and third classes, Madras Railway) per ditto, ditto ...	12·8
Third class (which includes all articles for the time being comprised in the fourth and fifth classes, Madras Railway) per ditto, ditto ...	24·0

Fractions of a ton will be charged for proportionately, fractions of 20 lbs. being reckoned as 20 lbs.

N.B.—Carriages or vehicles will not be conveyed.

Parcels.

DISTANCE.	EXCLUSIVE OF COLLECTION AND DELIVERY.									
	10 lbs. and under.	Above 10 and not above 20 lbs.	Above 20 and not above 40 lbs.	Above 40 and not above 60 lbs.	Above 60 and not above 80 lbs.	Above 80 and not above 100 lbs.	Above 100 and not above 120 lbs.	Above 120 and not above 140 lbs.	Above 140 and not above 160 lbs.	Above 160 and not above 180 lbs.
	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
50 miles and under ...	0 2 6	0 3 9	0 5 0	0 6 3	0 7 6	0 8 9	0 10 0	0 11 3	0 12 6	0 13 9
Above 50 and not above 100 miles	0 5 0	0 7 6	0 10 0	0 12 6	0 15 0	1 1 6	1 4 0	1 6 6	1 9 0	1 11 6
„ 100 „ 150 „	0 7 6	0 11 3	0 15 0	1 2 9	1 6 6	1 10 3	1 14 0	2 1 9	2 5 6	2 9 3
„ 150 „ 200 „	0 10 0	0 15 0	1 4 0	1 9 0	1 14 0	2 3 0	2 8 0	2 13 0	3 2 0	3 7 0

The rates for bread, meat, fish, poultry (dead or alive), ice, fruit, plants, vegetables and flowers will be half parcel-rates as shown above.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 8, 1881.

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PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th December, 1880, and is hereby promulgated for general information:—

ACT No. XVI OF 1880.

An Act to regulate the Traffic on the Madras Irrigation and Canal Company's Canal.

Preamble.

WHEREAS, by the [illegible] Indenture made on the third day of June, one thousand eight hundred and sixty-three, between the Secretary of State for India in Council of the one part, and the Madras Irrigation and Canal Company (hereinafter referred to as "the Company") of the other part, it was, amongst other things, provided that the Company should be authorized and empowered to charge such tolls for navigation, and such fares or rates for the conveyance of passengers, animals and goods, as should not exceed the rates, tolls or fares which should be [illegible] and sanctioned by an Act of the Indian legislature; and that the Company should not in any case charge any higher tolls, fares or rates whatsoever; and whereas it is expedient to define and sanction, for the purposes of the said clause, fares and rates for the conveyance of passengers, animals and goods;

And whereas it is also expedient to empower the Company to make rules for the conveyance of passengers, animals and goods upon, and the use, management and working of, its canal; It is hereby enacted as follows:—

[illegible] title.

Commencement.

1. This Act may be called "The Madras Irrigation and Canal Company's Act, 1880;" and it shall come into force at once.

Fares and rates for conveyance of passengers and goods.

2. The fares and rates specified in the schedule hereto annexed shall be deemed to be the fares and rates defined and sanctioned for the purposes of the said clause.

Company empowered to make working rules for its canal.

3. The Company may, from time to time, make rules for the following purposes, that is to say:—

(*a*) for licensing vessels (other than those of the Company) to navigate the canal and for registering vessels so licensed and denoting upon each its carrying capacity;

(*b*) for fixing the maximum number of passengers or animals, and the maximum amount of goods, which vessels navigating the canal may carry; and

(*c*) generally for regulating the traffic upon, and the use and management of all vessels upon, the canal.

Penalty for breach of rules.

4. Any such rule may contain a provision that any person committing a breach of it shall be liable to a fine which may extend to fifty rupees, or, in default of payment of such fine, to simple imprisonment for a term which may extend to one month.

Notification of rules.

5. All such rules shall, when sanctioned by the Governor of Fort St. George in Council and published in the *Fort St. George Gazette*, have the force of law.

Power to cancel rules.

The said Governor in Council may at any time cancel any such rule.

Copy and translation of Act, &c., to be shown at stations and on vessels.

6. A copy of this Act and the rules made hereunder, and of the Time-table and Tariff of Charges which may from time to time be observed for the Company's vessels navigating the canal, shall be exhibited, both in English and in Telugu, in some conspicuous place at each station of the canal, and

in each vessel employed by the Company in conveying passengers, animals or goods over the canal.

7. Any servant of the Company in charge of any such station or vessel at or in which the provisions of section six are not complied with shall be punished with fine which may extend to ten rupees; and the Company shall forfeit to Government the sum of fifty rupees for every day during which such provisions are not complied with at or in any such station or vessel.

Penalty for failure to exhibit copy and translation as required by section 6.

8. Any person committing any offence against this Act or the rules made under it shall be triable for such offence at any place at which he may be, or which the Governor of Fort St. George in Council may, from time to time, by notification in the official Gazette, direct, as well as in any other place in which he might be tried under any law for the time being in force.

Place of trial.

9. Nothing in this Act shall be deemed to prevent any person from being arrested, prosecuted or punished under any other law for any act or omission which constitutes an offence against this Act or the rules made under it:

Provided that no person shall be punished twice for the same offence.

Saving of prosecutions under other laws.

THE SCHEDULE.

(*See section 2.*)

Fares and Rates.

PASSENGERS.

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Third class, per ditto ditto { Mail (fast)	3·2
Third class, per ditto ditto { Ordinary	2·0

ANIMALS.

	Pies.
A horse or mule taken singly, per mile or fraction of a mile ...	14·4
	Annas.
Cattle, horses and mules, per 10 or fraction of 10, per ditto ...	6·0
Calves needing only half the space of a cow, to be reckoned as half.	
Sheep, goats and pigs, per 60 or fraction of 60, per ditto	6·0
Asses, half the rates for horses.	

N.B.—Dogs if conveyed at all will not be charged for, no accommodation being provided for them.

Elephants and camels will not be conveyed at all.

GOODS.

Heavy Goods, i.e., Goods weighing above 180 lbs.

	Pies.
First class (which includes all articles for the time being comprised in the special and first classes, Madras Railway) per ton, per mile or fraction of a mile	7·2
Second class (which includes all articles for the time being comprised in the second and third classes, Madras Railway) per ditto, ditto ...	12·8
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Fractions of a ton will be charged for proportionately, fractions of 20 lbs. being reckoned as 20 lbs.

N.B.—Carriages or vehicles will not be conveyed.

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	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
50 miles and under ...	0 2 6	0 3 9	0 5 0	0 6 3	0 7 6	0 8 9	0 10 0	0 11 3	0 12 6	0 13 9
Above 50 and not above 100 miles	0 5 0	0 7 6	0 10 0	0 12 6	0 15 0	1 1 6	1 4 0	1 6 6	1 9 0	1 11 6
„ 100 „ 150 „	0 7 6	0 11 3	0 15 0	1 2 9	1 6 6	1 10 3	1 14 0	2 1 9	2 5 6	2 9 3
„ 150 „ 200 „	0 10 0	0 15 0	1 4 0	1 9 0	1 14 0	2 3 0	2 8 0	2 13 0	3 2 0	3 7 0

The rates for bread, meat, fish, poultry (dead or alive), ice, fruit, plants, vegetables and flowers will be half parcel-rates as shown above.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 1st January, 1881, and is hereby promulgated for general information:—

ACT No. I OF 1881.

An Act for the determination of claims to Táj Mahal's pension.

WHEREAS, by a treaty dated the 24th Shabán 1244, Hijri, corresponding with the first day of March, 1829, and made between His Majesty the King of Oudh and the Government of the Hon'ble the East India Company, it was (amongst other things) agreed that a certain pension therein specified should be paid by the English Government to one Nawáb Táj Mahal therein named, and that if she should die leaving an heir or heirs the English Government might at its election continue as before such pension to her heirs, or make over to them the principal sum proportionate to such pension according to the rate thereinbefore mentioned;

Preamble.

and whereas the said Táj Mahal is now dead and doubts exist as to who are her heirs, and it is therefore expedient to provide for the appointment of a person to represent her estate for the purpose of receiving such pension;

and whereas the Secretary of State for India in Council is desirous of making over to the persons entitled to receive the said pension the principal sum proportionate thereto as provided in the said treaty, and it is expedient to empower the said Secretary of State in Council to capitalize the said pension pending the appointment of a person as aforesaid; It is hereby enacted as follows:—

1. This Act may be called "Táj Mahal's Pension Act, 1881"; and it shall come into force at once.

Short title. Commencement.

2. Any person considering himself entitled to the said pension or any portion thereof may apply in writing to the Court of the District Judge of Lucknow (hereinafter called the District Court) for a certificate authorizing him to receive the same.

Certificate to be obtained by application to the District Court.

The application shall be in such form and shall contain such particulars as the Governor General in Council may from time to time, by rules to be published in the *Gazette of India*, direct.

Form of application.

3. The District Court shall fix a day for hearing the application, and shall cause to be stuck up in the court-house, and otherwise published or made known at the expense of the applicant in such manner as it thinks fit, a copy of the application, with a notice stating the time and place at which it will be heard, and calling upon all persons claiming to have a better right than the applicant to the grant of the certificate to come in and oppose the application.

Publication of application and notice to persons desiring to oppose it.

4. On the day so fixed, or any subsequent day to which the Court may adjourn the hearing, the Court shall, if no person claiming to have a better right than the applicant to the grant of the certificate is present, hear the application; and if, after recording the evidence produced by the applicant in support of his claim, and making such further enquiry (if any) as it thinks necessary, the Court is of opinion that the applicant has established his claim, it shall make an order for granting him a certificate.

Procedure at hearing when no opposition.

In the event of the applicant not having, in the opinion of the Court, established his claim, it shall make an order dismissing his application.

5. In any case in which any person claiming to have a better right than the applicant to the grant of the certificate is present, the Court shall, after hearing the application and recording the evidence produced by the applicant in support of his claim, hear such person and record the evidence produced by him in support of his claim, and shall then, after making such further enquiry (if any) as it thinks necessary, determine which of the parties (if either) has established his claim to the certificate, and shall make an order for granting the same accordingly.

Procedure in case of opposition.

In the event of neither party having, in the opinion of the Court, established his claim, the Court shall make an order dismissing both the application and the counter-claim.

6. When any order dismissing an application under section four, or any order under section five, is made, an appeal by any party to the proceedings, who deems himself aggrieved by such order, shall lie to the High Court, which may make an order dismissing such appeal or granting a certificate, or otherwise reversing or varying the order of the District Court, as it thinks fit.

Appeal to the High Court.

7. The period of limitation for an appeal under section six shall be sixty days from the date of the order appealed against.

Period of limitation for appeal.

In computing such period, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

8. A certificate granted under this Act shall specify the payments which the person to whom it is granted is entitled to receive, and shall contain such other particulars as the Governor General in Council may from time to time prescribe in this behalf.

Form of certificate.

9. Every certificate granted under section four, or section six,

Effect of certificate.

and every certificate granted under section five, when the period of limitation fixed by section seven has expired without an appeal having been preferred against the order granting such certificate, shall, while it remains in force, be conclusive evidence against the said Secretary of State in Council of the right of the person to whom it has been granted to receive the payments specified therein, and shall, unless or until it is rescinded and the authority rescinding it has given to the said Secretary of State in Council notice of such rescission, empower such person to give to the said Secretary of State in Council a full discharge for any such payment.

10. The said Secretary of State in Council shall not be bound to pay the said pension or any portion thereof to any person claiming the same, except on the production by such person of a certificate, granted in the manner herein provided, authorizing him to receive the same.

No obligation to pay except on production of certificate.

11. Nothing herein contained shall be deemed to affect the right of any person to recover by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate

Right of third parties against holder of certificate saved.

12. The Court ordering any certificate to be granted under this Act may, if it thinks fit, direct that before such certificate is granted, such security (if any) as it thinks necessary shall be taken from the person to whom such certificate is to be granted, for his rendering an account of the payments to be received by him in virtue of such certificate to any person who may be entitled to recover from him in manner referred to in section eleven the whole or any part of such payments.

Court may take security from grantee of certificate.

13. The District Court may, on the application of any person who has recovered by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate, grant a certificate to such person in supersession, wholly or in part, as the case may be, of the former certificate.

Court may grant fresh certificate to person who has recovered by suit amount paid to holder of old certificate.

No appeal shall lie from any order under this section.

On the grant of a fresh certificate under this section the former certificate shall be deemed to be rescinded wholly or in part, as the case may be.

Effect of fresh certificate.

14. In all proceedings under this Act the District Court and the High Court shall, as far as may be and except as herein otherwise provided, exercise the powers and follow the procedure conferred on, and prescribed for, a Court of first instance and a Court of appeal respectively by the Code of Civil Procedure: Provided that nothing contained in Chapter XLV of the said Code shall apply to any order made in any such proceeding.

Proceedings to be regulated by Code of Civil Procedure.

15. The provisions of section thirteen of the said Code shall apply to all cases under section five of this Act in which the question of heirship to the said Táj Mahal, having been directly and substantially in issue in a suit in a Court of competent jurisdiction between the claimants, or between parties under whom they or any of them claim, litigating under the same title, has been heard and finally determined by such Court.

Matters decided in civil suits to be treated as *res judicata*.

16. All payments heretofore made by or on behalf of the said Secretary of State in Council under the said treaty shall be deemed to have been made in accordance with law: Provided that nothing in this section shall affect the right of any person to recover by suit the amount of any such payment from the person to whom the same has been made.

Indemnity as to payments already made.

17. The said Secretary of State in Council may, pending the grant of a certificate as hereinbefore provided, invest in securities of the Government of India the principal sum proportionate to the pension of the said Táj Mahal according to the rate mentioned in the said treaty, and may invest the income from time to time resulting from such securities in like securities.

Government empowered to capitalize the amount of the pension.

And, thereupon, all further claim to such pension and income shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall be entitled, in lieu of such pension and income, to the securities aforesaid, together with the uninvested income (if any) which from the date of making such investment has resulted from such securities.

On capitalization, all claim to pension barred.

18. The said Secretary of State in Council shall, without unnecessary delay, invest, in securities of the Government of India, all arrears of such pension due at the time of the passing of this Act, and all such arrears falling due thereafter, and before the investment of the principal sum aforesaid. When any such arrears have been so invested, all further claim in respect thereof shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall, in lieu of such arrears, be entitled to the securities in which they have been invested and the income resulting therefrom.

Arrears of pension accruing before capitalization to be invested.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 1st January, 1881, and is hereby promulgated for general information:—

ACT No. II OF 1881.

An Act to regulate the Navigation of the Pegu and Sittang Canal, and to provide for the protection of the said Canal and the execution of works necessary for its maintenance.

WHEREAS the Government has constructed a canal connecting the waters of the Pegu and Sittang rivers, partly by digging artificial channels and partly by using the water-bed of the Ka-ya-zoo creek; and whereas it is necessary to provide for the navigation, protection and maintenance of the said canal; It is hereby enacted as follows:

Preamble.

Preliminary.

1. This Act may be called "The Pegu and Sittang Canal Act, 1881";

Short title.

and it shall come into force at once.

Commencement.

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

Interpretation-clause.

(1) "The canal" means the Pegu and Sittang Canal,

"The canal."

and includes—

(*a*) all channels and reservoirs now or hereafter constructed, maintained or controlled by the Government for the supply or storage of water in connection with the said canal, or supplemental thereto, between the Sittang lock, situated at Myit-kyo, on the Sittang river, and the Pegu lock, situated near the village of Sin-o-bo, on the Pegu river;

(*b*) all works, embankments, structures and supply and escape-channels connected with the canal or with the said channels and reservoirs;

(*c*) all lands occupied by the Government for the purposes of the said canal, and all buildings, machinery, fences, gates and other erections, trees, crops, plantations or other produce occupied by, or belonging to, the Government, upon such lands:

(2) "Vessel" includes boats, rafts, timber and other floating bodies:

"Vessel."

(3) "Canal Officer" means an officer appointed under this Act by the Chief Commissioner to exercise control over the canal or any part thereof:

"Canal Officer."

(4) "Superintending Canal Officer" means an officer exercising general control over the canal.

"Superintending Canal Officer."

3. The Chief Commissioner may from time to time declare, by notification in the *British Burma Gazette*, the officers by whom and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

Power to appoint officers.

Navigation of the Canal.

4. Such tolls as the Chief Commissioner may from time to time, by notification in the *British Burma Gazette*, direct, shall be levied from all vessels entering or navigating the canal.

Tolls to be levied from vessels using the canal.

5. Any vessel entering or navigating the canal contrary to the rules made in that behalf under this Act by the Chief Commissioner, or so as to cause danger to the canal or to the other vessels therein, may be removed or detained, or both removed and detained, by a Canal Officer, or by any other person duly authorized under section three in that behalf.

Power to detain vessels violating rules.

The owner of any vessel causing damage to the canal, or removed or detained under this section, shall be liable to pay to the Government such charge as the Canal Officer, with the approval of the Superintending Canal Officer, determines to be necessary to defray the cost of repairing such damage, or of such removal or detention, as the case may be.

6. If any toll or charge due under this Act in respect of any vessel is not paid on demand to the person authorized to collect the same, the Canal Officer may seize and detain such vessel and the furniture thereof, until such toll or charge, together with all expenses arising from such seizure and detention, is paid in full.

Power to detain vessel on failure to pay tolls or charges.

7. If any charge due to the Government in respect of any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is not paid on demand to the person authorized to collect the same, the Canal Officer may seize such cargo or goods, and detain it or them until the charge so due, together with all expenses arising from such seizure and detention, is paid in full.

Power to seize cargo or goods if charges due thereon are not paid.

8. Within a reasonable time after any seizure under section six or section seven, the Canal Officer shall give notice to

Power to sell property seized under sections 6 and 7.

the owner or person in charge of the property seized that it, or such portion of it as may be necessary, will, on a day to be named in the notice, but not sooner than twenty-one days from the date of the notice, be sold in satisfaction of the claim on account of which such property is detained, unless the claim is discharged before the day so named;

and if such claim is not so discharged, the Canal Officer may, on such day, sell the property seized, or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale.

The residue (if any) of such property, and of the proceeds of the sale, shall be made over to the owner or person in charge of the property seized.

9. If any vessel is found abandoned in the canal, or any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is or are left unclaimed for a period of two months, the Canal Officer may take possession of the same.

Procedure in respect of vessels abandoned and goods unclaimed.

The officer so taking possession shall publish a notice, in such manner as the Chief Commissioner may from time to time by rule direct, that if such vessel and its contents, or such cargo or goods, is or are not claimed previously to a day to be named in the notice, not sooner than thirty days from the date of such notice, he will sell the same; and if such vessel, contents, cargo or goods is or are not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

Power to sell.

The said vessel and its contents, and the said cargo or goods, if unsold, or, if a sale has taken place, the proceeds of the sale, after paying all tolls and charges due in respect of the vessel, cargo or goods and all expenses incurred by the Canal Officer on account of the taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Canal Officer.

Disposal of proceeds of sale.

If the Canal Officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold and the proceeds to be paid into the district-treasury, there to be held until the right thereto is decided by a Court of competent jurisdiction.

Maintenance of the Canal.

10. A Canal Officer, empowered by the Commissioner of the Division generally or specially in this behalf, or any other person acting under the general or special order of such officer, may enter on any land in the neighbourhood of the canal and remove any obstructions, and may close any channels and do any other thing necessary or convenient for the maintenance of the canal.

Power of Canal Officer to enter on land and remove obstructions, &c.

11. Any such officer or other person may, for the purposes of any survey or enquiry relating to any part of the canal under the charge of such officer, enter upon any such lands, and undertake surveys or levels thereon, and dig and bore into the sub-soil;

Power to enter and survey, &c.

and make and set up suitable land-marks, level-marks and water-gauges;

and do all other acts necessary for such purposes;

and, where otherwise such enquiry cannot be completed, such officer or other person may cut down and clear away any part of any standing crop, fence or jungle.

Power to clear land.

12. In case of any accident happening or being reasonably apprehended to the canal, any such officer or other person may enter upon any such lands, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

Power to enter, to repair and to prevent accidents.

13. In every case of entry under section ten, eleven or twelve, the Canal Officer shall tender, as soon as may be reasonably practicable, to the owner or occupiers of the land compensation for any damage which may be occasioned by such entry and by any proceeding under such section.

Compensation for damage caused by entry.

In case of dispute as to the sufficiency of the amount so tendered, the Canal Officer shall forthwith refer the same for decision by the Deputy Commissioner, whose decision thereon shall be final.

Obtaining Labour and Materials for Work on the Canal.

14. Whenever it appears to a Canal Officer that, unless some work is immediately executed, such serious damage will happen to the canal as will cause sudden and extensive public injury,

Procedure for obtaining labour and materials for works urgently required.

and that the labourers or materials necessary for the proper execution of such work cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such damage,

such officer may, by order under his hand, direct that the provisions of this section shall be put into operation for the execution of such work, and thereupon—

(*a*) every able-bodied person whose name appears in the list hereinafter mentioned shall, if required so to do by such officer or by any person authorized by him in this behalf, be bound to assist in the execution of such work by labouring thereon as such officer or other person directs, and

(*b*) such officer or any person authorized by him in this behalf may enter into and upon any immoveable property in the neighbourhood of the Canal, and take possession of, appropriate and remove any trees or bamboos, whether standing or not, and any timber, mats, ropes or other materials found in or upon such property, and use the same for the purposes of such work.

Every person authorized as mentioned in this section shall be deemed to be a public servant within the meaning of the Indian Penal Code.

15. Subject to such rules as the Chief Commissioner may from time to time, with the previous sanction of the Governor General in Council, prescribe in this behalf, the Deputy Commissioners of Rangoon and Shwaygin shall prepare lists of persons residing in the neighbourhood of the canal in the said districts respectively and liable to be required under section fourteen to assist as aforesaid, and may from time to time add to or alter such list or any part thereof.

Deputy Commissioner to prepare list of persons liable to serve.

16. All persons labouring or detained for the purpose of labouring in compliance with a requisition made under section fourteen, or whose materials may be taken under that section, shall, as soon as may be reasonably practicable, be paid by the Canal Officer for their labour and detention, or for such materials (as the case may be), at a rate not being less than twenty-five per cent. above the highest market-rates for similar labour or materials for the time being prevailing in the neighbourhood.

Payment for labour impressed and materials taken.

Any dispute arising between the Canal Officer and any person as to the amount to be paid to such person under this section may be referred by either party to the Deputy Commissioner, whose decision thereon shall be final.

17. Whenever, from the removal, under section fourteen, of any trees, bamboos or other materials, any damage over and above the price payable for such materials results directly to any person, the Canal Officer shall pay to such person such sum as may be agreed upon as compensation for such damage. In case of dispute as to the amount so to be paid, either party may refer such dispute to the Deputy Commissioner, whose decision thereon shall be final.

Compensation for damage done in taking materials.

Offences and Penalties.

18. Whoever, without proper authority and voluntarily, does any of the acts following, that is to say:—

Offences under Act.

(*a*) damages, alters or obstructs the canal;

(*b*) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under the canal;

(*c*) interferes with or alters the flow of water in any river or stream, so as to endanger or damage the canal or render it less useful;

(*d*) corrupts or fouls the water of the canal, so as to render it less fit for the purposes for which it is ordinarily used;

(*e*) causes any vessel to enter or navigate, or to remain at any place in, the canal contrary to the rules for the time being prescribed by the Chief Commissioner for entering, navigating or remaining in the canal;

(*f*) while navigating the canal, neglects to take proper precautions to prevent injury to the canal and to vessels therein;

(*g*) being a person liable to labour under section fourteen, refuses or neglects without reasonable cause so to labour;

(*h*) destroys or moves any land-mark, level-mark or water-gauge fixed by the authority of a Canal Officer;

(*i*) passes, or causes animals or vehicles to pass, on or across any of the works, banks or channels of the canal contrary to rules made under this Act, after he has been desired by a Canal Officer to desist therefrom; or

(*j*) pastures any animals on the banks of the canal or knowingly suffers any animals belonging to him or under his charge to graze on such banks;

shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Penalty.

Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act; provided that no person shall be punished twice for the same offence.

Saving of prosecution under other laws.

19. Any fine imposed under this Act upon the owner of any vessel, or the servant or agent of such owner, or any other person in charge of a vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure, or, if the Magistrate imposing the fine so directs, as though it were a charge under this Act due in respect of such vessel.

Recovery of fines for offences in navigating canal.

20. Any person duly authorized in this behalf under section three may remove from the lands or buildings belonging to the canal, or may arrest without a warrant, and take forthwith before a Magistrate or to the nearest Police-station, to be dealt with according to law, any person who, within his view, commits any of the offences mentioned in clauses (*a*), (*b*) and (*c*) of section eighteen.

Power to arrest without warrant.

Power to make Rules.

21. The Chief Commissioner may, subject to the control of the Governor General in Council, from time to time make rules consistent with this Act to regulate the following matters:—

Power to make rules.

(*a*) the navigation of the canal;

(*b*) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;

(*c*) the amount of any tolls leviable under this Act; and

(*d*) generally, to carry out the provisions of this Act.

The Chief Commissioner may, in making any such rule, attach to the breach of it the penalty specified in section eighteen.

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

Publication of rules.

Validation of past proceedings.

22. Anything heretofore done which might legally have been done if this Act had been in force shall be deemed to have been done in accordance with law.

Validation of past proceedings.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 15, 1881.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th December, 1880, and is hereby promulgated for general information :—

ACT No. XVI OF 1880.

An Act to regulate the Traffic on the Madras Irrigation and Canal Company's Canal.

Preamble.

WHEREAS, by the twenty-seventh clause of an Indenture made on the third day of June, one thousand eight hundred and sixty-three, between the Secretary of State for India in Council of the one part, and the Madras Irrigation and Canal Company (hereinafter referred to as "the Company") of the other part, it was, amongst other things, provided that the Company should be authorized and empowered to charge such tolls for navigation, and such fares or rates for the conveyance of passengers, animals and goods, as should not exceed the rates, tolls or fares which should be defined and sanctioned by an Act of the Indian legislature; and that the Company should not in any case charge any higher tolls, fares or rates whatsoever; and whereas it is expedient to define and sanction, for the purposes of the said clause, fares and rates for the conveyance of passengers, animals and goods;

And whereas it is also expedient to empower the Company to make rules for the conveyance of passengers, animals and goods upon, and the use, management and working of, its canal; It is hereby enacted as follows :—

Short title.

Commencement.

1. This Act may be called "The Madras Irrigation and Canal Company's Act, 1880;" and it shall come into force at once.

Fares and rates for conveyance of passengers and goods.

2. The fares and rates specified in the schedule hereto annexed shall be deemed to be the fares and rates defined and sanctioned for the purposes of the said clause.

Company empowered to make working rules for its canal.

3. The Company may, from time to time, make rules for the following purposes, that is to say :—

(*a*) for licensing vessels (other than those of the Company) to navigate the canal and for registering vessels so licensed and denoting upon each its carrying capacity;

(*b*) for fixing the maximum number of passengers or animals, and the maximum amount of goods, which vessels navigating the canal may carry; and

(*c*) generally for regulating the traffic upon, and the use and management of all vessels upon, the canal.

Penalty for breach of rules.

4. Any such rule may contain a provision that any person committing a breach of it shall be liable to a fine which may extend to fifty rupees, or, in default of payment of such fine, to simple imprisonment for a term which may extend to one month.

Notification of rules.

5. All such rules shall, when sanctioned by the Governor of Fort St. George in Council and published in the *Fort St. George Gazette*, have the force of law.

Power to cancel rules.

The said Governor in Council may at any time cancel any such rule.

Copy and translation of Act, &c., to be shown at stations and on vessels.

6. A copy of this Act and the rules made hereunder, and of the Time-table and Tariff of Charges which may from time to time be observed for the Company's vessels navigating the canal, shall be exhibited, both in English and in Telugu, in some conspicuous place at each station of the canal, and

in each vessel employed by the Company in conveying passengers, animals or goods over the canal.

Penalty for failure to exhibit copy and translation as required by section 6.

7. Any servant of the Company in charge of any such station or vessel at or in which the provisions of section six are not complied with shall be punished with fine which may extend to ten rupees; and the Company shall forfeit to Government the sum of fifty rupees for every day during which such provisions are not complied with at or in any such station or vessel.

Place of trial.

8. Any person committing any offence against this Act or the rules made under it shall be triable for such offence at any place at which he may be, or which the Governor of Fort St. George in Council may, from time to time, by notification in the official Gazette, direct, as well as in any other place in which he might be tried under any law for the time being in force.

Saving of prosecutions under other laws.

9. Nothing in this Act shall be deemed to prevent any person from being arrested, prosecuted or punished under any other law for any act or omission which constitutes an offence against this Act or the rules made under it:

Provided that no person shall be punished twice for the same offence.

THE SCHEDULE.

(*See section 2.*)

Fares and Rates.

PASSENGERS.

	Pies.
First class, per passenger, per mile or fraction of a mile ...	14·4
Second class, per ditto ditto ...	5·6
Third class, per ditto ditto { Mail (fast)	3·2
Third class, per ditto ditto { Ordinary	2·0

ANIMALS.

	Pies.
A horse or mule taken singly, per mile or fraction of a mile ...	14·4
	Annas.
Cattle, horses and mules, per 10 or fraction of 10, per ditto ..	6·0
Calves needing only half the space of a cow, to be reckoned as half.	
Sheep, goats and pigs, per 60 or fraction of 60, per ditto	6·0
Asses, half the rates for horses.	

N.B.—Dogs if conveyed at all will not be charged for, no accommodation being provided for them.

Elephants and camels will not be conveyed at all.

GOODS.

Heavy Goods, i.e., Goods weighing above 180 lbs.

	Pies.
First class (which includes all articles for the time being comprised in the special and first classes, Madras Railway) per ton, per mile or fraction of a mile	7·2
Second class (which includes all articles for the time being comprised in the second and third classes, Madras Railway) per ditto, ditto ...	12·8
Third class (which includes all articles for the time being comprised in the fourth and fifth classes, Madras Railway) per ditto, ditto ...	24·0

Fractions of a ton will be charged for proportionately, fractions of 20 lbs. being reckoned as 20 lbs.

N.B.—Carriages or vehicles will not be conveyed.

Parcels.

DISTANCE.	EXCLUSIVE OF COLLECTION AND DELIVERY.									
	10 lbs. and under.	Above 10 and not above 20 lbs.	Above 20 and not above 40 lbs.	Above 40 and not above 60 lbs.	Above 60 and not above 80 lbs.	Above 80 and not above 100 lbs.	Above 100 and not above 120 lbs.	Above 120 and not above 140 lbs.	Above 140 and not above 160 lbs.	Above 160 and not above 180 lbs.
	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
20 miles and under ...	0 2 6	0 3 9	0 5 0	0 6 3	0 7 6	0 8 9	0 10 0	0 11 3	0 12 6	0 13 9
Above 20 and not above 100 miles	0 5 0	0 7 6	0 10 0	0 12 6	0 15 0	1 1 6	1 4 0	1 6 6	1 9 0	1 11 6
„ 100 „ 150 „	0 7 6	0 11 3	0 15 0	1 2 9	1 6 6	1 10 3	1 14 0	2 1 9	2 5 6	2 9 3
„ 150 „ 200 „	0 10 0	0 15 0	1 4 0	1 9 0	1 14 0	2 3 0	2 8 0	2 13 0	3 2 0	3 7 6

The rates for bread, meat, fish, poultry (dead or alive), ice, fruit, plants, vegetables and flowers will be half parcel-rates as shown above.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 1st January, 1881, and is hereby promulgated for general information:—

ACT No. I OF 1881.

An Act for the determination of claims to Táj Mahal's pension.

Preamble.

WHEREAS, by a treaty dated the 24th Shabán 1244, Hijri, corresponding with the first day of March, 1829, and made between His Majesty the King of Oudh and the Government of the Hon'ble the East India Company, it was (amongst other things) agreed that a certain pension therein specified should be paid by the English Government to one Nawáb Táj Mahal therein named, and that if she should die leaving an heir or heirs the English Government might at its election continue as before such pension to her heirs, or make over to them the principal sum proportionate to such pension according to the rate thereinbefore mentioned;

and whereas the said Táj Mahal is now dead and doubts exist as to who are her heirs, and it is therefore expedient to provide for the appointment of a person to represent her estate for the purpose of receiving such pension;

and whereas the Secretary of State for India in Council is desirous of making over to the persons entitled to receive the said pension the principal sum proportionate thereto as provided in the said treaty, and it is expedient to empower the said Secretary of State in Council to capitalize the said pension pending the appointment of a person as aforesaid; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "Táj Mahal's Pension Act, 1881"; and it shall come into force at once.

Application for certificate by applicant to [illegible] Court.

2. Any person considering himself entitled to the said pension or any portion thereof may apply in writing to the Court of the [illegible] Judge of Lucknow (hereinafter called the District Court) for a certificate authorizing him to receive the same.

Form of application.

The application shall be in such form and shall contain such particulars as the Governor General in Council may from time to time, by rules to be published in the *Gazette of India*, direct.

Publication of application and notice to persons desiring to oppose it.

3. The District Court shall fix a day for hearing the application, and shall cause to be stuck up in the court-house, and otherwise published or made known at the expense of the applicant in such manner as it thinks fit, a copy of the application, with a notice stating the time and place at which it will be heard, and calling upon all persons claiming to have a better right than the applicant to the grant of the certificate to come in and oppose the application.

Procedure at hearing when no opposition.

4. On the day so fixed, or any subsequent day to which the Court may adjourn the hearing, the Court shall, if no person claiming to have a better right than the applicant to the grant of the certificate is present, hear the application; and if, after recording the evidence produced by the applicant in support of his claim, and making such further enquiry (if any) as it thinks necessary, the Court is of opinion that the applicant has established his claim, it shall make an order for granting him a certificate.

In the event of the applicant not having, in the opinion of the Court, established his claim, it shall make an order dismissing his application.

Procedure in case of opposition.

5. In any case in which any person claiming to have a better right than the applicant to the grant of the certificate is present, the Court shall, after hearing the application and recording the evidence produced by the applicant in support of his claim, hear such person and record the evidence produced by him in support of his claim, and shall then, after making such further enquiry (if any) as it thinks necessary, determine which of the parties (if either) has established his claim to the certificate, and shall make an order for granting the same accordingly.

In the event of neither party having, in the opinion of the Court, established his claim, the Court shall make an order dismissing both the application and the counter-claim.

Appeal to the High Court.

6. When any order dismissing an application under section four, or any order under section five, is made, an appeal by any party to the proceedings, who deems himself aggrieved by such order, shall lie to the High Court, which may make an order dismissing such appeal, or granting a certificate, or otherwise reversing or varying the order of the District Court, as it thinks fit.

7. The period of limitation for an appeal under section six shall be sixty days from the date of the order appealed against.

Period of limitation for appeal.

In computing such period, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

8. A certificate granted under this Act shall specify the payments which the person to whom it is granted is entitled to receive, and shall contain such other particulars as the Governor General in Council may from time to time prescribe in this behalf.

Form of certificate.

9. Every certificate granted under section four, or section six,

Effect of certificate.

and every certificate granted under section five, when the period of limitation fixed by section seven has expired without an appeal having been preferred against the order granting such certificate, shall, while it remains in force, be conclusive evidence against the said Secretary of State in Council of the right of the person to whom it has been granted to receive the payments specified therein, and shall, unless or until it is rescinded and the authority rescinding it has given to the said Secretary of State in Council notice of such rescission, empower such person to give to the said Secretary of State in Council a full discharge for any such payment.

10. The said Secretary of State in Council shall not be bound to pay the said pension or any portion thereof to any person claiming the same, except on the production by such person of a certificate, granted in the manner herein provided, authorizing him to receive the same.

No obligation to pay except on production of certificate.

11. Nothing herein contained shall be deemed to affect the right of any person to recover by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate.

Right of third parties against holder of certificate saved.

12. The Court ordering any certificate to be granted under this Act may, if it thinks fit, direct that before such certificate is granted, such security (if any) as it thinks necessary shall be taken from the person to whom such certificate is to be granted, for his rendering an account of the payments to be received by him in virtue of such certificate to any person who may be entitled to recover from him in manner referred to in section eleven the whole or any part of such payments.

Court may take security from grantee of certificate.

13. The District Court may, on the application of any person who has recovered by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate, grant a certificate to such person in supersession, wholly or in part, as the case may be, of the former certificate.

Court may grant fresh certificate to person who has recovered by suit amount paid to holder of old certificate.

No appeal shall lie from any order under this section.

On the grant of a fresh certificate under this section the former certificate shall be deemed to be rescinded wholly or in part, as the case may be.

Effect of fresh certificate.

14. In all proceedings under this Act the District Court and the High Court shall, as far as may be and except as herein otherwise provided, exercise the powers and follow the procedure conferred on, and prescribed for, a Court of first instance and a Court of appeal respectively by the Code of Civil Procedure: Provided that nothing contained in Chapter XLV of the said Code shall apply to any order made in any such proceeding.

Proceedings to be regulated by Code of Civil Procedure.

15. The provisions of section thirteen of the said Code shall apply to all cases under section five of this Act in which the question of heirship to the said Táj Mahal, having been directly and substantially in issue in a suit in a Court of competent jurisdiction between the claimants, or between parties under whom they or any of them claim, litigating under the same title, has been heard and finally determined by such Court.

Matters decided in civil suits to be treated as *res judicata*.

16. All payments heretofore made by or on behalf of the said Secretary of State in Council under the said treaty shall be deemed to have been made in accordance with law: Provided that nothing in this section shall affect the right of any person to recover by suit the amount of any such payment from the person to whom the same has been made.

Indemnity as to payments already made.

17. The said Secretary of State in Council may, pending the grant of a certificate as hereinbefore provided, invest in securities of the Government of India the principal sum proportionate to the pension of the said Táj Mahal according to the rate mentioned in the said treaty, and may invest the income from time to time resulting from such securities in like securities.

Government empowered to capitalize the amount of the pension.

And, thereupon, all further claim to such pension and income shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall be entitled, in lieu of such pension and income, to the securities aforesaid, together with the uninvested income (if any) which from the date of making such investment has resulted from such securities.

On capitalization, all claim to pension barred.

18. The said Secretary of State in Council shall, without unnecessary delay, invest, in securities of the Government of India, all arrears of such pension due at the time of the passing of this Act, and all such arrears falling due thereafter, and before the investment of the principal sum aforesaid. When any such arrears have been so invested, all further claim in respect thereof shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall, in lieu of such arrears, be entitled to the securities in which they have been invested and the income resulting therefrom.

Arrears of pension accruing before capitalization to be invested.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of Ipdia in Council received the assent of His Excellency the Governor General on the 1st January, 1881, and is hereby promulgated for general information:—

ACT No. II OF 1881.

An Act to regulate the Navigation of the Pegu and Sittang Canal, and to provide for the protection of the said Canal and the execution of works necessary for its maintenance.

WHEREAS the Government has constructed a canal connecting the waters of the Pegu and Sittang rivers, partly by digging artificial channels and partly by using the water-bed of the Ka-ya-zoo creek; and whereas it is necessary to provide for the navigation, protection and maintenance of the said canal; It is hereby enacted as follows:

Preamble.

Preliminary.

1. This Act may be called "The Pegu and Sittang Canal Act, 1881";

Short title.

and it shall come into force at once.

Commencement.

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

Interpretation-clause.

(1) "The canal" means the Pegu and Sittang Canal, and includes—

"The canal."

(*a*) all channels and reservoirs now or hereafter constructed, maintained or controlled by the Government for the supply or storage of water in connection with the said canal, or supplemental thereto, between the Sittang lock, situated at Myit-kyo, on the Sittang river, and the Pegu lock, situated near the village of Sin-o-bo, on the Pegu river;

(*b*) all works, embankments, structures and supply and escape-channels connected with the canal or with the said channels and reservoirs;

(*c*) all lands occupied by the Government for the purposes of the said canal, and all buildings, machinery, fences, gates and other erections, trees, [illegible] or other produce occupied by, or belonging to, the Government, upon such lands:

(2) "Vessel" includes boats, rafts, timber and other floating [illegible]:

(3) "Canal Officer" means an officer appointed under this Act by the Chief Commissioner to exercise control over the canal or any part thereof:

"Canal Officer."

(4) "Superintending Canal Officer" means an officer exercising general control over the canal.

"Superintending Canal Officer."

3. The Chief Commissioner may from time to time declare, by notification in the *British Burma Gazette*, the officers by whom and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

Power to appoint officers.

Navigation of the Canal.

4. Such tolls as the Chief Commissioner may from time to time, by notification in the *British Burma Gazette*, direct, shall be levied from all vessels entering or navigating the canal.

Tolls to be levied from vessels using the canal.

5. Any vessel entering or navigating the canal contrary to the rules made in that behalf under this Act by the Chief Commissioner, or so as to cause danger to the canal or to the other vessels therein, may be removed or detained, or both removed and detained, by a Canal Officer, or by any other person duly authorized under section three in that behalf.

Power to detain vessels violating rules.

The owner of any vessel causing damage to the canal, or removed or detained under this section, shall be liable to pay to the Government such charge as the Canal Officer, with the approval of the Superintending Canal Officer, determines to be necessary to defray the cost of repairing such damage, or of such removal or detention, as the case may be.

6. If any toll or charge due under this Act in respect of any vessel is not paid on demand to the person authorized to collect the same, the Canal Officer may seize and detain such vessel and the furniture thereof, until such toll or charge, together with all expenses arising from such seizure and detention, is paid in full.

Power to detain vessel on failure to pay tolls or charges.

7. If any charge due to the Government in respect of any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is not paid on demand to the person authorized to collect the same, the Canal Officer may seize such cargo or goods, and detain it or them until the charge so due, together with all expenses arising from such seizure and detention, is paid in full.

Power to seize cargo or goods if charges due thereon are not paid.

8. Within a reasonable time after any seizure under section six or section seven, the [illegible] Officer shall give [illegible]

Power to sell property seized under sections 6 and 7.

the owner or person in charge of the property seized that it, or such portion of it as may be necessary, will, on a day to be named in the notice, but not sooner than twenty-one days from the date of the notice, be sold in satisfaction of the claim on account of which such property is detained, unless the claim is discharged before the day so named;

and if such claim is not so discharged, the Canal Officer may, on such day, sell the property seized, or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale.

The residue (if any) of such property, and of the proceeds of the sale, shall be made over to the owner or person in charge of the property seized.

Procedure in respect of vessels abandoned and goods unclaimed.

9. If any vessel is found abandoned in the canal, or any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is or are left unclaimed for a period of two months, the Canal Officer may take possession of the same.

Power to sell.

The officer so taking possession shall publish a notice, in such manner as the Chief Commissioner may from time to time by rule direct, that if such vessel and its contents, or such cargo or goods, is or are not claimed previously to a day to be named in the notice, not sooner than thirty days from the date of such notice, he will sell the same; and if such vessel, contents, cargo or goods is or are not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

Disposal of proceeds of sale.

The said vessel and its contents, and the said cargo or goods, if unsold, or, if a sale has taken place, the proceeds of the sale, after paying all tolls and charges due in respect of the vessel, cargo or goods and all expenses incurred by the Canal Officer on account of the taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Canal Officer.

If the Canal Officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold and the proceeds to be paid into the district-treasury, there to be held until the right thereto is decided by a Court of competent jurisdiction.

Maintenance of the Canal.

Power of Canal Officer to enter on land and remove obstructions, &c.

10. A Canal Officer, empowered by the Commissioner of the Division generally or specially in this behalf, or any other person acting under the general or special order of such officer, may enter on any land in the neighbourhood of the canal and remove any obstructions, and may close any channels and do any other thing necessary or convenient for the maintenance of the canal.

Power to enter and survey, &c.

11. Any such officer or other person may, for the purposes of any enquiry relating to any part of the canal under the charge of such officer, enter upon any such lands, and undertake surveys or levels thereon, and dig and bore into the sub-soil;

and make and set up suitable land-marks, level-marks and water-gauges;

and do all other acts necessary for such purposes;

and, where otherwise such enquiry cannot be completed, such officer or other person may cut down and clear away any part of any standing crop, fence or jungle.

Power to clear land.

Power to enter, to repair and to prevent accidents.

12. In case of any accident happening or being reasonably apprehended to the canal, any such officer or other person may enter upon any such lands, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

Compensation for damage caused by entry.

13. In every case of entry under section ten, eleven or twelve, the Canal Officer shall tender, as soon as may be reasonably practicable, to the owner or occupiers of the land compensation for any damage which may be occasioned by such entry and by any proceeding under such section.

In case of dispute as to the sufficiency of the amount so tendered, the Canal Officer shall forthwith refer the same for decision by the Deputy Commissioner, whose decision thereon shall be final.

Obtaining Labour and Materials for Work on the Canal.

Procedure for obtaining labour and materials for works urgently required.

14. Whenever it appears to a Canal Officer that, unless some work is immediately executed, such serious damage will happen to the canal as will cause sudden and extensive public injury,

and that the labourers or materials necessary for the proper execution of such work cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such damage,

such officer may, by order under his hand, direct that the provisions of this section shall be put into operation for the execution of such work, and thereupon—

(*a*) every able-bodied person whose name appears in the list hereinafter mentioned shall, if required so to do by such officer or by any person authorized by him in this behalf, be bound to assist in the execution of such work by labouring thereon as such officer or other person directs, and

(*b*) such officer or any person authorized by him in this behalf may enter into and upon any immoveable property in the neighbourhood of the Canal, and take possession of, appropriate and remove any trees or bamboos, whether standing or not, and any timber, mats, ropes or other materials found in or upon such property, and use the same for the purposes of such work.

Every person authorized as mentioned in this section shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Deputy Commissioner to prepare list of persons liable to serve.

15. Subject to such rules as the Chief Commissioner may from time to time, with the previous sanction of the Governor General in Council, prescribe in this behalf, the Deputy Commissioners of Rangoon and Shwaygin shall prepare lists of persons residing in the neighbourhood of the canal in the said districts respectively and liable to be required under section fourteen to assist as aforesaid, and may from time to time add to or alter such list or any part thereof.

Payment for labour impressed and materials taken.

16. All persons labouring or detained for the purpose of labouring in compliance with a requisition made under section fourteen, or whose materials may be taken under that section, shall, as soon as may be reasonably practicable, be paid by the Canal Officer for their labour and detention, or for such materials (as the case may be), at a rate not being less than twenty-five per cent. above the highest market-rates for similar labour or materials for the time being prevailing in the neighbourhood.

Any dispute arising between the Canal Officer and any person as to the amount to be paid to such person under this section may be referred by either party to the Deputy Commissioner, whose decision thereon shall be final.

Compensation for damage done in taking materials.

17. Whenever, from the removal, under section fourteen, of any trees, bamboos or other materials, any damage over and above the price payable for such materials results directly to any person, the Canal Officer shall pay to such person such sum as may be agreed upon as compensation for such damage. In case of dispute as to the amount so to be paid, either party may refer such dispute to the Deputy Commissioner, whose decision thereon shall be final.

Offences and Penalties.

Offences under Act.

18. Whoever, without proper authority and voluntarily, does any of the acts following, that is to say:—

(*a*) damages, alters or obstructs the canal;

(*b*) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under the canal;

(*c*) interferes with or alters the flow of water in any river or stream, so as to endanger or damage the canal or render it less useful;

(*d*) corrupts or fouls the water of the canal, so as to render it less fit for the purposes for which it is ordinarily used;

(*e*) causes any vessel to enter or navigate, or to remain at any place in, the canal contrary to the rules for the time being prescribed by the Chief Commissioner for entering, navigating or remaining in the canal;

(*f*) while navigating the canal, neglects to take proper precautions to prevent injury to the canal and to vessels therein;

(*g*) being a person liable to labour under section fourteen, refuses or neglects without reasonable cause so to labour;

(*h*) destroys or moves any land-mark, level-mark or water-gauge fixed by the authority of a Canal Officer;

(*i*) passes, or causes animals or vehicles to pass, on or across any of the works, banks or channels of the canal contrary to rules made under this Act, after he has been desired by a Canal Officer to desist therefrom; or

(*j*) pastures any animals on the banks of the canal or knowingly suffers any animals belonging to him or under his charge to graze on such banks;

shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Penalty.

Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act: provided that no person shall be punished twice for the same offence.

Saving of prosecution under other laws.

Recovery of fines for offences in navigating canal.

19. Any fine imposed under this Act upon the owner of any vessel, or the servant or agent of such owner, or any other person in charge of a vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure, or, if the Magistrate imposing the fine so directs, as though it were a charge under this Act due in respect of such vessel.

Power to arrest without warrant.

20. Any person duly authorized in this behalf under section three may remove from the lands or buildings belonging to the canal, or may arrest without a warrant, and take forthwith before a Magistrate or to the nearest Police-station, to be dealt with according to law, any person who, within his view, commits any of the offences mentioned in clauses (*a*), (*b*) and (*c*) of section eighteen.

Power to make Rules.

Power to make rules.

21. The Chief Commissioner may, subject to the control of the Governor General in Council, from time to time make rules consistent with this Act to regulate the following matters:—

(*a*) the navigation of the canal;

(*b*) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;

(*c*) the amount of any tolls leviable under this Act; and

(*d*) generally, to carry out the provisions of this Act.

The Chief Commissioner may, in making any such rule, attach to the breach of it the penalty specified in section eighteen.

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

Publication of rules.

Validation of past proceedings.

Validation of past proceedings.

22. Anything heretofore done which might legally have been done if this Act had been in force shall be deemed to have been done in accordance with law.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 22, 1881.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 1st January, 1881, and is hereby promulgated for general information :—

ACT No. I OF 1881.

An Act for the determination of claims to Táj Mahal's pension.

Preamble.

WHEREAS, by a treaty dated the 24th Shabán 1244, Hijri, corresponding with the first day of March, 1829, and made between His Majesty the King of Oudh and the Government of the Hon'ble the East India Company, it was (amongst other things) agreed that a certain pension therein specified should be paid by the English Government to one Nawáb Táj Mahal therein named, and that if she should die leaving an heir or heirs the English Government might at its election continue as before such pension to her heirs, or make over to them the principal sum proportionate to such pension according to the rate thereinbefore mentioned;

and whereas the said Táj Mahal is now dead and doubts exist as to who are her heirs, and it is therefore expedient to provide for the appointment of a person to represent her estate for the purpose of receiving such pension;

and whereas the Secretary of State for India in Council is desirous of making over to the persons entitled to receive the said pension the principal sum proportionate thereto as provided in the said treaty, and it is expedient to empower the said Secretary of State in Council to capitalize the said pension pending the appointment of a person as aforesaid; It is hereby enacted as follows :—

Short title. Commencement.

1. This Act may be called "Táj Mahal's Pension Act, 1881"; and it shall come into force at once.

Certificate to be obtained by application to the District Court.

2. Any person considering himself entitled to the said pension or any portion thereof may apply in writing to the Court of the District Judge of Lucknow (hereinafter called the District Court) for a certificate authorizing him to receive the same.

Form of application.

The application shall be in such form and shall contain such particulars as the Governor General in Council may from time to time, by rules to be published in the *Gazette of India*, direct.

Publication of application and notice to persons desiring to oppose it.

3. The District Court shall fix a day for hearing the application, and shall cause to be stuck up in the court-house, and otherwise published or made known at the expense of the applicant in such manner as it thinks fit, a copy of the application, with a notice stating the time and place at which it will be heard, and calling upon all persons claiming to have a better right than the applicant to the grant of the certificate to come in and oppose the application.

Procedure at hearing when no opposition.

4. On the day so fixed, or any subsequent day to which the Court may adjourn the hearing, the Court shall, if no person claiming to have a better right than the applicant to the grant of the certificate is present, hear the application; and if, after recording the evidence produced by the applicant in support of his claim, and making such further enquiry (if any) as it thinks necessary, the Court is of opinion that the applicant has established his claim, it shall make an order for granting him a certificate.

In the event of the applicant not having, in the opinion of the Court, established his claim, it shall make an order dismissing his application.

Procedure in case of opposition.

5. In any case in which any person claiming to have a better right than the applicant to the grant of the certificate is present, the Court shall, after hearing the application and recording the evidence produced by the applicant in support of his claim, hear such person and record the evidence produced by him in support of his claim, and shall then, after making such further enquiry (if any) as it thinks necessary, determine which of the parties (if either) has established his claim to the certificate, and shall make an order for granting the same accordingly.

In the event of neither party having, in the opinion of the Court, established his claim, the Court shall make an order dismissing both the application and the counter-claim.

6. When any order dismissing an application under section four, or any order under section five, is made, an appeal by any party to the proceedings, who deems himself aggrieved by such order, shall lie to the High Court, which may make an order dismissing such appeal or granting a certificate, or otherwise reversing or varying the order of the District Court, as it thinks fit.

Appeal to the High Court.

7. The period of limitation for an appeal under section six shall be sixty days from the date of the order appealed against.

Period of limitation for appeal.

In computing such period, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

8. A certificate granted under this Act shall specify the payments which the person to whom it is granted is entitled to receive, and shall contain such other particulars as the Governor General in Council may from time to time prescribe in this behalf.

Form of certificate.

9. Every certificate granted under section four, or section six,

Effect of certificate.

and every certificate granted under section five, when the period of limitation fixed by section seven has expired without an appeal having been preferred against the order granting such certificate, shall, while it remains in force, be conclusive evidence against the said Secretary of State in Council of the right of the person to whom it has been granted to receive the payments specified therein, and shall, unless or until it is rescinded and the authority rescinding it has given to the said Secretary of State in Council notice of such rescission, empower such person to give to the said Secretary of State in Council a full discharge for any such payment.

10. The said Secretary of State in Council shall not be bound to pay the said pension or any portion thereof to any person claiming the same, except on the production by such person of a certificate, granted in the manner herein provided, authorizing him to receive the same.

No obligation to pay except on production of certificate.

11. Nothing herein contained shall be deemed to affect the right of any person to recover by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate.

Right of third parties against holder of certificate saved.

12. The Court ordering any certificate to be granted under this Act may, if it thinks fit, direct that before such certificate is granted, such security (if any) as it thinks necessary shall be taken from the person to whom such certificate is to be granted, for his rendering an account of the payments to be received by him in virtue of such certificate to any person who may be entitled to recover from him in manner referred to in section eleven the whole or any part of such payments.

Court may take security from grantee of certificate.

13. The District Court may, on the application of any person who has recovered by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate, grant a certificate to such person in supersession, wholly or in part, as the case may be, of the former certificate.

Court may grant fresh certificate to person who has recovered by suit amount paid to holder of old certificate.

No appeal shall lie from any order under this section.

On the grant of a fresh certificate under this section the former certificate shall be deemed to be rescinded wholly or in part, as the case may be.

Effect of fresh certificate.

14. In all proceedings under this Act the District Court and the High Court shall, as far as may be and except as herein otherwise provided, exercise the powers and follow the procedure conferred on, and prescribed for, a Court of first instance and a Court of appeal respectively by the Code of Civil Procedure: Provided that nothing contained in Chapter XLV of the said Code shall apply to any order made in any such proceeding.

Proceedings to be regulated by Code of Civil Procedure.

15. The provisions of section thirteen of the said Code shall apply to all cases under section five of this Act in which the question of heirship to the said Táj Mahal, having been directly and substantially in issue in a suit in a Court of competent jurisdiction between the claimants, or between parties under whom they or any of them claim, litigating under the same title, has been heard and finally determined by such Court.

Matters decided in civil suits to be treated as *res judicata*.

16. All payments heretofore made by or on behalf of the said Secretary of State in Council under the said treaty shall be deemed to have been made in accordance with law: Provided that nothing in this section shall affect the right of any person to recover by suit the amount of any such payment from the person to whom the same has been made.

Indemnity as to payments already made.

17. The said Secretary of State in Council may, pending the grant of a certificate as hereinbefore provided, invest in securities of the Government of India the principal sum proportionate to the pension of the said Táj Mahal according to the rate mentioned in the said treaty, and may invest the income from time to time resulting from such securities in like securities.

Government empowered to capitalize the amount of the pension.

And, thereupon, all further claim to such pension and income shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall be entitled, in lieu of such pension and income, to the securities aforesaid, together with the uninvested income (if any) which from the date of making such investment has resulted from such securities.

On capitalization, all claim to pension barred.

18. The said Secretary of State in Council shall, without unnecessary delay, invest, in securities of the Government of India, all arrears of such pension due at the time of the passing of this Act, and all such arrears falling due thereafter, and before the investment of the principal sum aforesaid. When any such arrears have been so invested, all further claim in respect thereof shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall, in lieu of such arrears, be entitled to the securities in which they have been invested and the income resulting therefrom.

Arrears of pension accruing before capitalization to be invested.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 1st January, 1881, and is hereby promulgated for general information:—

ACT No. II OF 1881.

An Act to regulate the Navigation of the Pegu and Sittang Canal, and to provide for the protection of the said Canal and the execution of works necessary for its maintenance.

Preamble.

WHEREAS the Government has constructed a canal connecting the waters of the Pegu and Sittang rivers, partly by digging artificial channels and partly by using the water-bed of the Ka-ya-zoo creek; and whereas it is necessary to provide for the navigation, protection and maintenance of the said canal; It is hereby enacted as follows:

Preliminary.

Short title.

1. This Act may be called "The Pegu and Sittang Canal Act, 1881";

Commencement.

and it shall come into force at once.

Interpretation-clause.

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

"The canal."

(1) "The canal" means the Pegu and Sittang Canal, and includes—

(*a*) all channels and reservoirs now or hereafter constructed, maintained or controlled by the Government for the supply or storage of water in connection with the said canal, or supplemental thereto, between the Sittang lock, situated at Myit-kyo, on the Sittang river, and the Pegu lock, situated near the village of Sin-o-bo, on the Pegu river;

(*b*) all works, embankments, structures and supply and escape-channels connected with the canal or with the said channels and reservoirs;

(*c*) all lands occupied by the Government for the purposes of the said canal, and all buildings, machinery, fences, gates and other erections, trees, crops, plantations or other produce occupied by, or belonging to, the Government, upon such lands:

"Vessel."

(2) "Vessel" includes boats, rafts, timber and other floating bodies:

"Canal Officer."

(3) "Canal Officer" means an officer appointed under this Act by the Chief Commissioner to exercise control over the canal or any part thereof:

"Superintending Canal Officer."

(4) "Superintending Canal Officer" means an officer exercising general control over the canal.

Power to appoint officers.

3. The Chief Commissioner may from time to time declare, by notification in the *British Burma Gazette*, the officers by whom and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

Navigation of the Canal.

Tolls to be levied from vessels using the canal.

4. Such tolls as the Chief Commissioner may from time to time, by notification in the *British Burma Gazette*, direct, shall be levied from all vessels entering or navigating the canal.

Power to detain vessels violating rules.

5. Any vessel entering or navigating the canal contrary to the rules made in that behalf under this Act by the Chief Commissioner, or so as to cause danger to the canal or to the other vessels therein, may be removed or detained, or both removed and detained, by a Canal Officer, or by any other person duly authorized under section three in that behalf.

The owner of any vessel causing damage to the canal, or removed or detained under this section, shall be liable to pay to the Government such charge as the Canal Officer, with the approval of the Superintending Canal Officer, determines to be necessary to defray the cost of repairing such damage, or of such removal or detention, as the case may be.

Power to detain vessel on failure to pay tolls or charges.

6. If any toll or charge due under this Act in respect of any vessel is not paid on demand to the person authorized to collect the same, the Canal Officer may seize and detain such vessel and the furniture thereof, until such toll or charge, together with all expenses arising from such seizure and detention, is paid in full.

Power to seize cargo or goods if charges due thereon are not paid.

7. If any charge due to the Government in respect of any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is not paid on demand to the person authorized to collect the same, the Canal Officer may seize such cargo or goods, and detain it or them until the charge so due, together with all expenses arising from such seizure and detention, is paid in full.

Power to sell property seized under sections 6 and 7.

8. Within a reasonable time after any seizure under section six or section seven, the Canal Officer shall give notice to

the owner or person in charge of the property seized that it, or such portion of it as may be necessary, will, on a day to be named in the notice, but not sooner than twenty-one days from the date of the notice, be sold in satisfaction of the claim on account of which such property is detained, unless the claim is discharged before the day so named;

and if such claim is not so discharged, the Canal Officer may, on such day, sell the property seized, or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale.

The residue (if any) of such property, and of the proceeds of the sale, shall be made over to the owner or person in charge of the property seized.

Procedure in respect of vessels abandoned and goods unclaimed.

9. If any vessel is found abandoned in the canal, or any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is or are left unclaimed for a period of two months, the Canal Officer may take possession of the same.

Power to sell.

The officer so taking possession shall publish a notice, in such manner as the Chief Commissioner may from time to time by rule direct, that if such vessel and its contents, or such cargo or goods, is or are not claimed previously to a day to be named in the notice, not sooner than thirty days from the date of such notice, he will sell the same; and if such vessel, contents, cargo or goods is or are not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

Disposal of proceeds of sale.

The said vessel and its contents, and the said cargo or goods, if unsold, or, if a sale has taken place, the proceeds of the sale, after paying all tolls and charges due in respect of the vessel, cargo or goods and all expenses incurred by the Canal Officer on account of the taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Canal Officer.

If the Canal Officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold and the proceeds to be paid into the district-treasury, there to be held until the right thereto is decided by a Court of competent jurisdiction.

Maintenance of the Canal.

Power of Canal Officer to enter on land and remove obstructions, &c.

10. A Canal Officer, empowered by the Commissioner of the Division generally or specially in this behalf, or any other person acting under the general or special order of such officer, may enter on any land in the neighbourhood of the canal and remove any obstructions, and may close any channels and do any other thing necessary or convenient for the maintenance of the canal.

Power to enter and survey, &c.

11. Any such officer or other person may, for the purposes of any enquiry relating to any part of the canal under the charge of such officer, enter upon any such lands, and undertake surveys or levels thereon, and dig and bore into the subsoil;

and make and set up suitable land-marks, level-marks and water-gauges;

and do all other acts necessary for such purposes;

and, where otherwise such enquiry cannot be completed, such officer or other person may cut down and clear away any part of any standing crop, fence or jungle.

Power to clear land.

Power to enter, to repair and to prevent accidents.

12. In case of any accident happening or being reasonably apprehended to the canal, any such officer or other person may enter upon any such lands, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

Compensation for damage caused by entry.

13. In every case of entry under section ten, eleven or twelve, the Canal Officer shall tender, as soon as may be reasonably practicable, to the owner or occupiers of the land compensation for any damage which may be occasioned by such entry and by any proceeding under such section.

In case of dispute as to the sufficiency of the amount so tendered, the Canal Officer shall forthwith refer the same for decision by the Deputy Commissioner, whose decision thereon shall be final.

Obtaining Labour and Materials for Work on the Canal.

Procedure for obtaining labour and materials for works urgently required.

14. Whenever it appears to a Canal Officer that, unless some work is immediately executed, such serious damage will happen to the canal as will cause sudden and extensive public injury,

and that the labourers or materials necessary for the proper execution of such work cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such damage,

such officer may, by order under his hand, direct that the provisions of this section shall be put into operation for the execution of such work, and thereupon—

(*a*) every able-bodied person whose name appears in the list hereinafter mentioned shall, if required so to do by such officer or by any person authorized by him in this behalf, be bound to assist in the execution of such work by labouring thereon as such officer or other person directs, and

(*b*) such officer or any person authorized by him in this behalf may enter into and upon any immoveable property in the neighbourhood of the Canal, and take possession of, appropriate and remove any trees or bamboos, whether standing or not, and any timber, mats, ropes or other materials found in or upon such property, and use the same for the purposes of such work.

Every person authorized as mentioned in this section shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Deputy Commissioner to prepare list of persons liable to serve.

15. Subject to such rules as the Chief Commissioner may from time to time, with the previous sanction of the Governor General in Council, prescribe in this behalf, the Deputy Commissioners of Rangoon and Shwaygin shall prepare lists of persons residing in the neighbourhood of the canal in the said districts respectively and liable to be required under section fourteen to assist as aforesaid, and may from time to time add to or alter such list or any part thereof.

Payment for labour impressed and materials taken.

16. All persons labouring or detained for the purpose of labouring in compliance with a requisition made under section fourteen, or whose materials may be taken under that section, shall, as soon as may be reasonably practicable, be paid by the Canal Officer for their labour and detention, or for such materials (as the case may be), at a rate not being less than twenty-five per cent. above the highest market-rates for similar labour or materials for the time being prevailing in the neighbourhood.

Any dispute arising between the Canal Officer and any person as to the amount to be paid to such person under this section may be referred by either party to the Deputy Commissioner, whose decision thereon shall be final.

Compensation for damage done in taking materials.

17. Whenever, from the removal, under section fourteen, of any trees, bamboos or other materials, any damage over and above the price payable for such materials results directly to any person, the Canal Officer shall pay to such person such sum as may be agreed upon as compensation for such damage. In case of dispute as to the amount so to be paid, either party may refer such dispute to the Deputy Commissioner, whose decision thereon shall be final.

Offences and Penalties.

Offences under Act.

18. Whoever, without proper authority and voluntarily, does any of the acts following, that is to say:—

(*a*) damages, alters or obstructs the canal;

(*b*) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under the canal;

(*c*) interferes with or alters the flow of water in any river or stream, so as to endanger or damage the canal or render it less useful;

(*d*) corrupts or fouls the water of the canal, so as to render it less fit for the purposes for which it is ordinarily used;

(*e*) causes any vessel to enter or navigate, or to remain at any place in, the canal contrary to the rules for the time being prescribed by the Chief Commissioner for entering, navigating or remaining in the canal;

(*f*) while navigating the canal, neglects to take proper precautions to prevent injury to the canal and to vessels therein;

(*g*) being a person liable to labour under section fourteen, refuses or neglects without reasonable cause so to labour;

(*h*) destroys or moves any land-mark, level-mark or water-gauge fixed by the authority of a Canal Officer;

(*i*) passes, or causes animals or vehicles to pass, on or across any of the works, banks or channels of the canal contrary to rules made under this Act, after he has been desired by a Canal Officer to desist therefrom; or

(*j*) pastures any animals on the banks of the canal or knowingly suffers any animals belonging to him or under his charge to graze on such banks;

shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Penalty.

Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act: provided that no person shall be punished twice for the same offence.

Saving of prosecution under other laws.

Recovery of fines for offences in navigating canal.

19. Any fine imposed under this Act upon the owner of any vessel, or the servant or agent of such owner, or any other person in charge of a vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure, or, if the Magistrate imposing the fine so directs, as though it were a charge under this Act due in respect of such vessel.

Power to arrest without warrant.

20. Any person duly authorized in this behalf under section three may remove from the lands or buildings belonging to the canal, or may arrest without a warrant, and take forthwith before a Magistrate or to the nearest Police-station, to be dealt with according to law, any person who, within his view, commits any of the offences mentioned in clauses (*a*), (*b*) and (*c*) of section eighteen.

Power to make Rules.

Power to make rules.

21. The Chief Commissioner may, subject to the control of the Governor General in Council, from time to time make rules consistent with this Act to regulate the following matters:—

(*a*) the navigation of the canal;

(*b*) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;

(*c*) the amount of any tolls leviable under this Act; and

(*d*) generally, to carry out the provisions of this Act.

The Chief Commissioner may, in making any such rule, attach to the breach of it the penalty specified in section eighteen.

Publication of rules.

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

Validation of past proceedings.

Validation of past proceedings.

22. Anything heretofore done which might legally have been done if this Act had been in force shall be deemed to have been done in accordance with law.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th January, 1881, and is hereby promulgated for general information:—

ACT No. III OF 1881.

An Act to provide for certain matters relating to Securities of the Government of India.

Preamble.

WHEREAS the Governor General in Council has determined to issue, in respect of the four and a half per cent. loan of 1880, certificates declaring the bearers thereof entitled to the principal sums specified therein, and coupons for the interest payable on such principal sums;

and whereas the Governor General in Council may from time to time desire to issue like certificates, with or without like coupons, in respect of other loans;

and whereas it is expedient to declare the mode in which the title to such certificates and coupons shall be transferable;

and whereas it is also expedient to provide for certain other matters relating to all securities of the Government of India; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Indian Securities Act, 1881"; and shall come into force at once.

"Government securities."

2. In this Act, "Government securities" includes promissory notes, debentures, loan-certificates, coupons and all other securities issued by the Government of India, whether before or after the passing of this Act.

Certificates and coupons may be transferred and discharged like promissory notes payable to bearer.

3. Whenever the Governor General in Council has issued, in respect of any loan, a certificate declaring the bearer thereof to be entitled to the portion of the loan therein expressed, or a coupon for any amount payable as interest on any portion of such loan, the title to such certificate or coupon may be transferred as if the certificate or coupon were a promissory note payable to bearer;

and, on payment, by or on behalf of the Government, to the bearer of such certificate or coupon, of the amount expressed therein, at or after the date on which it becomes due, the Government shall be discharged as if such certificate or coupon were a promissory note payable to bearer.

No notice of trust.

4. No notice of any trust in respect of any Government security shall be receivable by the Government.

Indorser of Government security not liable for amount thereof.

5. No person shall, merely by reason of his having endorsed any Government security, be liable to pay any money due, whether on account of principal or interest, thereunder.

Signature to Government securities may be printed, &c.

6. The signature of the officer of the Government of India authorized to sign any Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct, on such securities.

Any such signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if the same had been subscribed in the proper handwriting of such officer.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th January, 1881 and is hereby promulgated for general information :—

ACT No. IV OF 1881.

An Act to enhance the rate of Port-dues leviable at Madras.

Preamble.

WHEREAS it has been determined to construct an artificial harbour for the port of Madras and to defray a portion of the interest on the principal sum expended on the construction of such harbour and of the annual expenses of maintaining the same out of the dues leviable on sea-going vessels of fifteen tons and upwards entering the said port :

And whereas the maximum rate of such dues is fixed by the Indian Ports Act, 1875, section forty-five, and the third part of the first schedule thereto annexed, and the amount of such rate is insufficient to defray such portion of the said interest and expenses in addition to the other charges to meet which the said dues are applicable :

And whereas it is therefore necessary to enhance, to the extent hereinafter mentioned, the maximum rate of dues so leviable ;

It is hereby enacted as follows :—

Short title. Commencement.

1. This Act may be called "The Madras Port-dues Act, 1881"; and It shall come into force as soon as the said harbour is, in the opinion of the Local Government, open for the use of sea-going vessels of fifteen tons and upwards, and the said Government has published, in the *Fort St. George Gazette*, a notification to that effect.

Amendment of Part III of the third schedule of Act XII of 1875.

2. In the Indian Ports Act, 1875, first schedule, Part III, the following amendments shall be made, that is to say :—

(*a*) in the first column, the numeral and word "9, Madras" shall be omitted ;

(*b*) in the first column, above the heading "*Eastern Group,*" the word "Madras" shall be inserted ; and

(*c*) opposite the word "Madras" so inserted there shall be inserted—

(1) in the second column, the words "sea-going vessels of fifteen tons and upwards" ; and

(2) in the third column, the words "not exceeding eight annas per ton : Provided that, in the case of vessels employed in the coasting trade not being steamers, the rates shall be one-half the rates chargeable in respect of other vessels."

Certain provisions of that Part to apply to Madras.

3. The provisions contained in the fourth column of the said Part shall, so far as they are applicable, apply to the Port of Madras.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January, 1881, and is hereby promulgated for general information:—

ACT No. V OF 1881.

THE PROBATE AND ADMINISTRATION ACT, 1881.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
Local extent.
Commencement.
2. Personal application.
3. Interpretation-clause.

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. Character and property of executor or administrator as such.
5. Administration with copy annexed of authenticated copy of will proved abroad.
6. Probate only to appointed executor.
7. Appointment express or implied.
8. Persons to whom probate cannot be granted.
9. Grant of probate to several executors simultaneously or at different times.
10. Separate probate of codicil discovered after grant of probate.
Procedure when different executors appointed by codicil.
11. Accrual of representation to surviving executor.
12. Effect of probate.
13. To whom administration may not be granted.
14. Effect of letters of administration.
15. Acts not validated by administration.
16. Grant of administration where executor has not renounced.
Exception.
17. Form and effect of renunciation of executorship.
18. Procedure where executor renounces or fails to accept within time limited.
19. Grant of administration to universal or residuary legatee.
20. Right to administration of representative of deceased residuary legatee.
21. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.
22. Citation before grant of administration to legatee other than universal or residuary.
23. To whom administration may be granted.

CHAPTER III.

OF LIMITED GRANTS.

(*a*).—*Grants limited in Duration.*
24. Probate of copy or draft of lost will.
25. Probate of contents of lost or destroyed will.
26. Probate of copy where original exists.
27. Administration until will produced.

(*b*).—*Grants for the Use and Benefit of others having Right.*
28. Administration, with will annexed, to attorney of absent executor.
29. Administration, with will annexed, to attorney of absent person, who, if present, would be entitled to administer.
30. Administration to attorney of absent person entitled to administer in case of intestacy.
31. Administration during minority of sole executor or residuary legatee.
32. Administration during minority of several executors or residuary legatees.
33. Administration for use and benefit of lunatic.
34. Administration *pendente lite*.

(*c*).—*For Special Purposes.*
35. Probate limited to purpose specified in will.
36. Administration with will annexed limited to particular purpose.
37. Administration limited to trust-property.
38. Administration limited to suit.
39. Administration limited to purpose of becoming party to suit to be brought against administrator.
40. Administration limited to collection and preservation of deceased's property.
41. Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

(*d*).—*Grants with Exception.*
42. Probate or administration with will annexed subject to exception.
43. Administration with exception.

(*e*).—*Grants of the Rest.*
44. Probate or administration of rest.

(*f*).—*Grants of Effects unadministered.*

SECTIONS.

45. Grant of effects unadministered.
46. Rules as to grants of effects unadministered.
47. Administration when limited grant expired, and still some part of estate unadministered.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

48. What errors may be rectified by Court.
49. Procedure where codicil discovered after grant of administration with will annexed.
50. Revocation or annulment for just cause.
"Just cause."

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

51. Jurisdiction of District Judge in granting and revoking probates, &c.
52. Power to appoint Delegate of District Judge to deal with non-contentious cases.
53. District Judge's powers as to grant of probate and administration.
54. District Judge may order person to produce testamentary papers.
55. Proceedings of District Judge's Court in relation to probate and administration.
56. When probate or administration may be granted by District Judge.
57. Disposal of application made to Judge of district in which deceased had no fixed abode.
58. Probate and letters of administration may be granted by Delegate.
59. Conclusiveness of probate or letters of administration.
Effect of unlimited probates, &c., granted by certain Courts.
60. Transmission of certificate by Court granting unlimited probate, &c., to other Courts.
61. Conclusiveness of application for probate or administration, if properly made and verified.
62. Petition for probate.
63. In what cases translation of will to be annexed to petition.
Verification of translation by person other than Court translator.
64. Petition for letters of administration.
65. Additional statements in petition for probate, &c.
66. Petition for probate or administration to be signed and verified.
67. Verification of petition for probate by one witness to will.
68. Punishment for false averment in petition or declaration.
69. District Judge may examine petitioner in person,
require further evidence,
and issue citations to inspect proceedings.
Publication of citation.
70. Caveats against grant of probate or administration.
71. Form of caveat.
72. After entry of caveat, no proceeding taken on petition until after notice to caveator.
73. District Delegate when not to grant probate or administration.
74. Power to transmit statement to District Judge in doubtful cases where no contention.
75. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.
76. Grant of probate to be under seal of Court.
Form of such grant.
77. Grant of letters of administration to be under seal of Court.
Form of such grant.
78. Administration-bond.
79. Assignment of administration-bond.
80. Time before which probate or administration shall not be granted.
81. Filing of original wills of which probate or administration with will annexed granted.
82. Grantee of probate or administration alone to sue, &c., until same revoked.
83. Procedure in contentious cases.
84. Payment to executor or administrator before probate or administration revoked.
Right of such executor or administrator to recoup himself.
85. Power to refuse letters of administration.
86. Appeals from orders of District Judge.
87. Concurrent jurisdiction of High Court.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

88. In respect of causes of action surviving deceased, and debts due at death.
89. Demands and rights of suit of or against deceased survive to and against executor or administrator.
90. Power of executor or administrator to dispose of property.
91. Purchase by executor or administrator of deceased's property.
92. Powers of several executors or administrators exerciseable by one.
93. Survival of powers on death of one of several executors or administrators.
94. Powers of administrator of effects unadministered.
95. Powers of administrator during minority.
96. Powers of married executrix or administratrix.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. As to deceased's funeral ceremonies.
98. Inventory and account.
99. Inventory to include property in any part of British India.
100. As to property of, and debts owing to, deceased.
101. Expenses to be paid before all debts.
102. Expenses to be paid next after such expenses.
103. Wages for certain services to be next paid, and then other debts.

SECTIONS.

104. Save as aforesaid, all debts to be paid equally and rateably.
105. Debts to be paid before legacies.
106. Executor or administrator not bound to pay legacies without indemnity.
107. Abatement of general legacies.
Executor not to pay one legatee in preference to another.
108. Non-abatement of specific legacy when assets sufficient to pay debts.
109. Right under demonstrative legacy, when assets sufficient to pay debts and necessary expenses.
110. Rateable abatement of specific legacies.
111. Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

112. Assent necessary to complete legatee's title.
113. Effect of executor's assent to specific legacy.
Nature of assent.
114. Conditional assent.
115. Assent of executor to his own legacy.
Implied assent.
116. Effect of executor's assent.
117. Executor when to deliver legacies.

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OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Commencement of annuity when no time fixed by will.
119. When annuity, to be paid quarterly or monthly, first falls due.
120. Date of successive payments when first payment directed to be made within given time, or on day certain.
Apportionment where annuitant dies between times of payment.

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OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Investment of sum bequeathed where legacy, not specific, given for life.
122. Investment of general legacy, to be paid at future time.
Intermediate interest.
123. Procedure when no fund charged with, or appropriated to, annuity.
124. Transfer to residuary legatee of contingent bequest.
125. Investment of residue bequeathed for life, with direction to invest in specified securities.
126. Time and manner of conversion and investment.
Interest payable until investment.
127. Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

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128. Legatee's title to produce of specific legacy.
129. Residuary legatee's title to produce of residuary fund.
130. Interest when no time fixed for payment of general legacy.
131. Interest when time fixed.
132. Rate of interest.
133. No interest on arrears of annuity within first year after testator's death.
134. Interest on sum to be invested to produce annuity.

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OF THE REFUNDING OF LEGACIES.

135. Refund of legacy paid under Judge's orders.
136. No refund if paid voluntarily.
137. Refund when legacy becomes due on performance of condition within further time allowed.
138. When each legatee compellable to refund in proportion.
139. Distribution of assets.
Creditor may follow assets.
140. Creditor may call upon legatee to refund.
141. When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.
142. When unsatisfied legatee must first proceed against executor, if solvent.
143. Limit to refunding of one legatee to another.
144. Refunding to be without interest.
145. Residue after usual payments to be paid to residuary legatee.

CHAPTER XIII.

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146. Liability of executor or administrator for devastation.
147. For neglect to get in any part of property.

CHAPTER XIV.

MISCELLANEOUS.

148. Provisions applied to administrator with will annexed.
149. Saving-clause.
150. Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.
151. Repeal of portions of Act XXVII of 1860.
152. Grant of probate or administration to supersede certificate under Act XXVII of 1860, or Bombay Regulation VIII of 1827.
153. Amendment of Court-fees Act.
154. Amendment of Hindú Wills Act.
155. Validation of grants of probate and administration made in British Burma.
156. Amendment of Act XV of 1877.

An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

Preamble.

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the

Indian Succession Act, 1865, does not apply; It is hereby enacted as follows:—

CHAPTER I.
PRELIMINARY.

Short title. Local extent. Commencement.

1. This Act may be called "The Probate and Administration Act, 1881":

It applies to the whole of British India;

and it shall come into force on the first day of April, 1881.

2. Chapters II to XIII, both inclusive, of this Act shall apply in the case of every Hindú, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865, dying before, on or after the said first day of April, 1881:

Personal application.

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:

Provided also that, except in cases to which the Hindú Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.

Interpretation-clause. "Province." "minor." "minority." "will." "codicil." "specific legacy." "demonstrative legacy." "probate." "executor."

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

"Province" includes any division of British India having a Court of the last resort:

"minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person:

"will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

"codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will:

"specific legacy" means a legacy of specified property:

"demonstrative legacy" means a legacy directed to be paid out of specified property:

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided:

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor: and

"administrator."

"District Judge" means the judge of a principal civil court of original jurisdiction.

"District Judge."

CHAPTER II.
OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

Character and property of executor or administrator as such.

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

Administration with copy annexed of authenticated copy of will proved abroad.

5. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the Province, whether in the British dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor.

6. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

7. The appointment may be express or by necessary implication.

Illustrations.

(*a.*) A wills that C be his executor if B will not. B is appointed executor by implication.

(*b.*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(*c.*) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

Grant of probate to several executors simultaneously or at different times.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first then to A.

Separate probate of codicil discovered after grant of probate.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Effect of probate.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

To whom administration may not be granted.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

Effect of letters of administration.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts not validated by administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Grant of administration where executor has not renounced.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

Exception.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Form and effect of renunciation of executorship.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Procedure where executor renounces or fails to accept within time limited.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal or residuary legatee.

19. When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Citation before grant of administration to legatee other than universal or residuary.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

To whom administration may be granted.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.
OF LIMITED GRANTS.

(*a*).—*Grants limited in Duration.*

Probate of copy or draft of lost will.

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed will.

25. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of copy where original exists.

26. When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original,

probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Administration until will produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b).—Grants for the Use and Benefit of others having Right.

Administration with will annexed to attorney of absent executor.

28. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above-mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

30. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned.

Administration during minority of sole executor or residuary legatee.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration for use and benefit of lunatic.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

Administration *pendente lite.*

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c).—For Special Purposes.

Probate limited to purpose specified in will.

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Administration with will annexed limited to particular purpose.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration limited to trust-property.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Administration limited to suit.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to purpose of becoming party to suit to be brought against administrator.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceased's property.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any

person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d).—Grants with Exception.

Probate or administration with will annexed subject to exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Administration with exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e).—Grants of the Rest.

Probate or administration of rest.

44. Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f).—Grants of Effects unadministered.

Grant of effects unadministered.

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

47. When a limited grant has expired by efflux-ion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

What errors may be rectified by Court.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Revocation or annulment for just cause.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—Just cause is—

1*st*, that the proceedings to obtain the grant were defective in substance;

2*nd*, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3*rd*, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4*th*, that the grant has become useless and inoperative through circumstances.

Illustrations.

(*a*). The Court by which the grant was made had no jurisdiction.

(*b*). The grant was made without citing parties who ought to have been cited.

(*c*). The will of which probate was obtained was forged or revoked.

(*d*). A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*). A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f*). Since probate was granted, a later will has been discovered.

(*g*). Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(*h*). The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, &c.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Power to appoint Delegate of District Judge to deal with non-contentious cases.

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Provided that, in the case of High Courts not established by Royal Charter, such appointment be

made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegatee."

District Judge's powers as to grant of probate and administration.

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge may order person to produce testamentary papers.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's Court in relation to probate and administration.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

When probate or administration may be granted by District Judge.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

Disposal of application made to Judge of District in which deceased had no fixed abode.

57. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

Conclusiveness of probate or letters of administration.

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the Province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted:

Effect of unlimited probates, &c., granted by certain Courts.

Provided that probates and letters of administration granted by a High Court established by Royal Charter, or by the Chief Court of the Panjáb, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

Transmission of certificate by Court granting unlimited probate, &c., to other Courts.

60. Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants, a certificate to the following effect:—

I, *A. B.*, Registrar [*or as the case may be*] of the High Court of Judicature at [*or as the case may be*], hereby certify that on the day of 188 the High Court of Judicature at [*or as the case may be*] granted probate of the will [*or* letters of administration of the estate] of *C. D.*, late of deceased, to *E. F.* of and *G. H.* of , and that such probate [*or* letters] has [*or* have] effect over all the property of the deceased throughout the whole of British India;

and such certificate shall be filed by the Court receiving the same.

Conclusiveness of application for probate or administration, if properly made and verified.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Petition for probate.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections twenty-four, twenty-five and twenty-six, a copy, draft or statement of the contents thereof annexed, and stating

the time of the testator's death,

that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

In what cases translation of will to be annexed to petition.

63. In cases wherein the will, copy or draft is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—

Verification of translation by person other than Court translator.

"I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

64. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

Additional statements in petition for probate, &c.

65. Every person applying to any of the Courts mentioned in the proviso to section fifty-nine for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by sections sixty-two and sixty-four, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section fifty-nine may, if it think fit, reject the same.

Petition for probate or administration to be signed and verified.

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I (*A. B.*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate by one witness to will.

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following:—

"I (*C. D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*) (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

Punishment for false averment in petition or declaration.

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person,

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

to examine the petitioner in person upon oath, and also

require further evidence,

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

and issue citations to inspect proceedings.

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

Publication of citation.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Caveats against grant of probate or administration.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Dele-

gate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

71. The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of *A. B.*, late of , deceased, who died on the day of at without notice to *C. D.* of ."

After entry of caveat, no proceeding taken on petition until after notice to caveator.

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

District Delegate when not to grant probate or administration.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

Power to transmit statement to District Judge in doubtful cases where no contention.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

75. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

Grant of probate to be under seal of Court.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, Judge of the District of ,

Form of such grant.

[*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

Grant of letters of administration to be under seal of Court.

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, , Judge of the District of ,

Form of such grant.

[*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of letters of administration (with *or* without the will annexed, *as the case may be*) of the property and credits of , late of , deceased, were granted to , the father (*or as the case may be*) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

Administration-bond.

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

Assignment of administration-bond.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time before which probate or administration shall not be granted.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Filing of original wills of which probate or administration with will annexed granted.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him: and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, &c., until same revoked.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

83. In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or administration revoked.

84. Where any probate is, or letters of administration are, revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

Right of such executor or administrator to recoup himself.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Power to refuse letters of administration.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindú Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

Appeals from orders of District Judge.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

Concurrent jurisdiction of High Court.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

In respect of causes of action surviving deceased, and debts due at death.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

Demands and rights of suit of or against deceased survive to and against executor or administrator.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

(*a*). A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

Power of executor or administrator to dispose of property.

90. An executor or administrator has power, with the consent of the Court by which the probate or letters of administration was or were granted, to dispose of the property of the deceased, either wholly or in part, in such manner as he thinks fit:

Provided that the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

Illustrations.

(*a*). The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it with the consent of the Court. The sale is valid.

(*b*). The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased with the consent of the Court. The mortgage is valid.

Purchase by executor or administrator of deceased's property.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators exerciseable by one.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(*a*). One of several executors has power to release a debt due to the deceased.

(*b*). One has power to surrender a lease.

(*c*). One has power to sell the property of the deceased, moveable or immoveable.

(*d*). One has power to assent to a legacy.

(*e*). One has power to endorse a promissory note payable to the deceased.

(*f*). The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Survival of powers on death of one of several executors or administrators.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator of effects unadministered.

95. An administrator during minority has all the powers of an ordinary administrator.

Powers of administrator during minority.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executrix or administratrix.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral ceremonies.

98. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same has or have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that have come to his hands, and the manner in which they have been applied or disposed of.

Inventory and account.

99. In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India:

Inventory to include property in any part of British India.

And the value of such property situate in each Province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Wages for certain services to be next paid, and then other debts.

104. Save as aforesaid, no creditor is to have a right of priority over another.

Save as aforesaid, all debts to be paid equally and rateably.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

105. Debts of every description must be paid before any legacy.

Debts to be paid before legacies.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

Abatement of general legacies.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Assent necessary to complete legatee's title.

Illustrations.

(*a*). A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b*). A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of assent.

Illustrations.

(*a*). A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*). The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*). A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*). Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*). A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(*a*). A bequeathes to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*). The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person and his assent may in like manner be express or implied.

Assent of executor to his own legacy.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Implied assent.

Illustration.

An executor takes the rent of a house or the interest of Government-securities bequeathed to him, and applies it to his own use. This is assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Effect of executor's assent.

Illustrations.

(*a*). A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b*). A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Executor when to deliver legacies.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity when no time fixed by will.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Date of successive payments when first payment directed to be made within given time, or on day certain.

and if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time.

The intermediate interest shall form part of the residue of the testator's estate.

Intermediate interest.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government-annuity of the specified amount shall be purchased, or,

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

Procedure when no fund charged with, or appropriated to, annuity.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Transfer to residuary legatee or contingent bequest.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Investment of residue bequeathed for life, with direction to invest in specified securities.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit;

Time and manner of conversion and investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Interest payable until investment.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Legatee's title to produce of specific legacy.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a*). A bequeathes his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*). A bequeathes his Government-securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*). The testator bequeathes all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18 forms part of the residue.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Residuary legatee's title to produce of residuary fund.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

Illustrations.

(*a*). The testator bequeathes the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*). The testator bequeathes the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Interest when no time fixed for payment of general legacy.

Exceptions.—(1). Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2). Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3). Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

Interest when time fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

132. The rate of interest shall be six per cent. per annum.

Rate of interest.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

No interest on arrears of annuity within first year after testator's death.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

Interest on sum to be invested to produce annuity.

CHAPTER XII

OF THE REFUNDING OF LEGACIES.

135. An executor who has paid a legacy under the order of a Judge, is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund of legacy paid under Judge's orders.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Refund when legacy becomes due on performance of condition within further time allowed.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

When each legatee compellable to refund in proportion.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution;

Distribution of assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

Creditor may call upon legatee to refund.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When unsatisfied legatee must first proceed against executor, if solvent.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit to refunding of one legatee to another.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

144. The refunding shall in all cases be without interest.

Refunding to be without interest.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Residue after usual payments to be paid to residuary legatee.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Liability of executor or administrator for devastation.

Illustrations.

(*a*). The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(*b*). The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(*c*). The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

For neglect to get in any part of property.

Illustrations.

(*a*). The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(*b*). The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Provisions applied to administrator with will annexed.

149. Nothing herein contained shall—

Saving-clause.

(*a*) validate any testamentary disposition which would otherwise have been invalid;

(*b*) invalidate any such disposition which would otherwise have been valid;

(*c*) deprive any person of any right of maintenance to which he would otherwise have been entitled; or

(*d*) affect the rights, duties and privileges of the Administrator General of Bengal, Madras or Bombay.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan, Buddhist or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.

151. In Act No. XXVII of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), sections 15 and 16 and the proviso to section 13 shall be repealed.

Repeal of portions of Act XXVII of 1860.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII of 1860, or Bombay Regulation No. VIII of 1827; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding:

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

Grant of probate or administration to supersede certificate under Act XXVII of 1860, or Bombay Regulation VIII of 1827.

153. In the Court-fees Act, 1870, schedule I, Nos. 11 and 12, in the third column, after the words "amount or value," the following shall be inserted, namely:—

Amendment of Court-fees Act.

"Provided that, when after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant."

154. The following amendments shall be made in the Hindú Wills Act, 1870 (namely):—

Amendment of Hindú Wills Act.

(*a*). For the portion of section two commencing with the words "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted.

(*b*). The third clause of section three and the last clause of section six shall be repealed.

(*c*). In section six, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and three" shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindú, Muhammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which, before this Act comes into force have been made in British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

Validation of grants of probate and administration made in British Burma.

156. In the second schedule to the Indian Limitation Act, 1877, No. 43, after the figures "321," the following shall be inserted, namely—"or under the Probate and Administration Act, 1881, section 139 or 140."

Amendment of Act XV of 1877.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January, 1881, and is hereby promulgated for general information:—

ACT No. VI OF 1881.

An Act to make further provision for the grant of Probate and Letters of Administration in non-contentious cases.

WHEREAS it is expedient to make further provision for the grant of probate and letters of administration in non-contentious cases; It is hereby enacted as follows:—

Preamble.

1. This Act may be called "The District Delegates Act, 1881":

Short title.

It extends to the whole of British India;

Extent.

and it shall come into force on the first day of April, 1881.

Commencement.

2. After section 235 of the Indian Succession Act, 1865, the following section shall be added:—

Addition of section after section 235 of Succession Act.

"235A. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Power to appoint Delegate of District Judge to deal with non-contentious cases.

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

"Persons so appointed shall be called 'District Delegates'."

3. After section 241 of the said Act, the following section shall be added:—

Addition of section after section 241 of same Act.

"241A. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate."

Probate and letters of administration may be granted by Delegate.

4. To sections 244 and 246 of the said Act, respectively, the following words shall be added:—

Addition to sections 244 and 246 of same Act.

"and when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate."

5. For section 251 of the said Act, the following section shall be substituted:—

Substitution of section for section 251 of same Act.

"251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same."

Caveats against grant of probate or administration.

6. In section 253 of the said Act, after the word "Judge" the words "or officer," and after the word "made" the words "or notice thereof has been given of its entry with some other Delegate," shall be inserted.

Amendment of section 253 of same Act.

7. After section 253 of the said Act, the following sections shall be added:—

Addition of sections after section 253 of same Act.

"253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

District Delegate when not to grant probate or administration.

"*Explanation.*—By 'contention' is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf to oppose the proceeding.

"253B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in

Power to transmit statement to District Judge in doubtful cases where no contention.

relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

"253C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge."

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

8. In the said Act, sections 254 and 255, respectively, after the words "I, Judge of the District of ," the words "(*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*))"; and in section 308, after the words "District Judge by whom" the words "or by whose District Delegate" shall be inserted.

Amendment of sections 254, 255 and 308 of same Act.

9. In the said Act, sections 246, 250, 255 and 259, after the words "District Judge," and in section 250 and section 254 (when it first occurs) after the word "Judge," the words "or District Delegate" shall be inserted respectively.

Introduction of the words "or District Delegate" in certain sections of same Act.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January, 1881, and is hereby promulgated for general information:—

ACT NO. VII OF 1881.

An Act to amend Bengal Act No. IX of 1880 (the Cess Act, 1880).

WHEREAS it is expedient to amend Bengal Act No. IX of 1880 (the Cess Act, 1880); It is hereby enacted as follows:—

Preamble.

1. In the said Act, after section sixty-four, the following sections shall be inserted, and shall be deemed to have been so inserted on and from the date on which such Act came into force:—

Amendment of Bengal Act No. IX of 1880.

"64A. All sums due to the holder of any estate or tenure under the provisions of this chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same, by any means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation:

Holders of estates, &c., how to recover from holders of rent-free lands.

"Provided that, if any such objection as is mentioned in section 53, has been made before the Collector, no proceedings shall be commenced, and no proceedings which have been commenced shall be continued, for recovery of cess in respect of the lands which are the subject of such objection, until such objection shall have been disposed of by the Collector.

"64B. In every suit for the recovery of any such sum, the person to whom the sum is due may proceed at his option either against the owner or holder of the rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and be followed by the same consequences in respect of the execution of such decree against the owner or holder of such land, and in respect of the sale of such land in such execution, as if the suit had been brought and the decree given against such owner or holder of such land, but shall have effect against such occupier personally so long only as he remains in occupation of such land, and no longer."

Owner, holder or occupier of rent-free lands may be sued.
Decree against occupier tantamount to decree against owner.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 29, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th January, 1881, and is hereby promulgated for general information:—

ACT No. III OF 1881.

An Act to provide for certain matters relating to Securities of the Government of India.

Preamble.

WHEREAS the Governor General in Council has determined to issue, in respect of the four and a half per cent. loan of 1880, certificates declaring the bearers thereof entitled to the principal sums specified therein, and coupons for the interest payable on such principal sums;

and whereas the Governor General in Council may from time to time desire to issue like certificates, with or without like coupons, in respect of other loans;

and whereas it is expedient to declare the mode in which the title to such certificates and coupons shall be transferable;

and whereas it is also expedient to provide for certain other matters relating to all securities of the Government of India; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Indian Securities Act, 1881"; and shall come into force at once.

"Government securities."

2. In this Act, "Government securities" includes promissory notes, debentures, loan-certificates, coupons and all other securities issued by the Government of India, whether before or after the passing of this Act.

Certificates and coupons may be transferred and discharged like promissory notes payable to bearer.

3. Whenever the Governor General in Council has issued, in respect of any loan, a certificate declaring the bearer thereof to be entitled to the portion of the loan therein expressed, or a coupon for any amount payable as interest on any portion of such loan, the title to such certificate or coupon may be transferred as if the certificate or coupon were a promissory note payable to bearer;

and, on payment, by or on behalf of the Government, to the bearer of such certificate or coupon, of the amount expressed therein, at or after the date on which it becomes due, the Government shall be discharged as if such certificate or coupon were a promissory note payable to bearer.

No notice of trust.

4. No notice of any trust in respect of any Government security shall be receivable by the Government.

Indorser of Government security not liable for amount thereof.

5. No person shall, merely by reason of his having endorsed any Government security, be liable to pay any money due, whether on account of principal or interest, thereunder.

Signature to Government securities may be printed, &c.

6. The signature of the officer of the Government of India authorized to sign any Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct, on such securities.

Any such signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if the same had been subscribed in the proper handwriting of such officer.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th January, 1881, and is hereby promulgated for general information :—

ACT No. IV OF 1881.

An Act to enhance the rate of Port-dues leviable at Madras.

Preamble.

WHEREAS it has been determined to construct an artificial harbour for the port of Madras and to defray a portion of the interest on the principal sum expended on the construction of such harbour and of the annual expenses of maintaining the same out of the dues leviable on sea-going vessels of fifteen tons and upwards entering the said port :

And whereas the maximum rate of such dues is fixed by the Indian Ports Act, 1875, section forty-five, and the third part of the first schedule thereto annexed, and the amount of such rate is insufficient to defray such portion of the said interest and expenses in addition to the other charges to meet which the said dues are applicable :

And whereas it is therefore necessary to enhance, to the extent hereinafter mentioned, the maximum rate of dues so leviable ;

It is hereby enacted as follows :—

Short title. Commencement.

1. This Act may be called "The Madras Port-dues Act, 1881"; and

It shall come into force as soon as the said harbour is, in the opinion of the Local Government, open for the use of sea-going vessels of fifteen tons and upwards, and the said Government has published, in the *Fort St. George Gazette*, a notification to that effect.

Amendment of Part III of the third schedule of Act XII of 1875.

2. In the Indian Ports Act, 1875, first schedule, Part III, the following amendments shall be made, that is to say :—

(*a*) in the first column, the numeral and word "9, Madras" shall be omitted ;

(*b*) in the first column, above the heading "*Eastern Group,*" the word "Madras" shall be inserted ; and

(*c*) opposite the word "Madras" so inserted there shall be inserted—

(1) in the second column, the words "sea-going vessels of fifteen tons and upwards" ; and

(2) in the third column, the words "not exceeding eight annas per ton : Provided that, in the case of vessels employed in the coasting trade not being steamers, the rates shall be one-half the rates chargeable in respect of other vessels."

Certain provisions of that Part to apply to Madras.

3. The provisions contained in the fourth column of the said Part shall, so far as they are applicable, apply to the Port of Madras.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January, 1881, and is hereby promulgated for general information:—

ACT No. V OF 1881.

THE PROBATE AND ADMINISTRATION ACT, 1881.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
Local extent.
Commencement.
2. Personal application.
3. Interpretation-clause.

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. Character and property of executor or administrator as such.
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9. Grant of probate to several executors simultaneously or at different times.
10. Separate probate of codicil discovered after grant of probate.
Procedure when different executors appointed by codicil.
11. Accrual of representation to surviving executor.
12. Effect of probate.
13. To whom administration may not be granted.
14. Effect of letters of administration.
15. Acts not validated by administration.
16. Grant of administration where executor has not renounced.
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17. Form and effect of renunciation of executorship.
18. Procedure where executor renounces or fails to accept within time limited.
19. Grant of administration to universal or residuary legatee.

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20. Right to administration of representative of deceased residuary legatee.
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24. Probate of copy or draft of lost will.
25. Probate of contents of lost or destroyed will.
26. Probate of copy where original exists.
27. Administration until will produced.

(b).—Grants for the Use and Benefit of others having Right.

28. Administration, with will annexed, to attorney of absent executor.
29. Administration, with will annexed, to attorney of absent person, who, if present, would be entitled to administer.
30. Administration to attorney of absent person entitled to administer in case of intestacy.
31. Administration during minority of sole executor or residuary legatee.
32. Administration during minority of several executors or residuary legatees.
33. Administration for use and benefit of lunatic.
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(c).—For Special Purposes.

35. Probate limited to purpose specified in will.
36. Administration with will annexed limited to particular purpose.
37. Administration limited to trust-property.
38. Administration limited to suit.
39. Administration limited to purpose of becoming party to suit to be brought against administrator.
40. Administration limited to collection and preservation of deceased's property.
41. Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

(d).—Grants with Exception.

42. Probate or administration with will annexed subject to exception.
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(e).—Grants of the Rest.

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46. Rules as to grants of effects unadministered.
47. Administration when limited grant expired, and still some part of estate unadministered.

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48. What errors may be rectified by Court.
49. Procedure where codicil discovered after grant of administration with will annexed.
50. Revocation or annulment for just cause.
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53. District Judge's powers as to grant of probate and administration.
54. District Judge may order person to produce testamentary papers.
55. Proceedings of District Judge's Court in relation to probate and administration.
56. When probate or administration may be granted by District Judge.
57. Disposal of application made to Judge of district in which deceased had no fixed abode.
58. Probate and letters of administration may be granted by Delegate.
59. Conclusiveness of probate or letters of administration.
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60. Transmission of certificate by Court granting unlimited probate, &c., to other Courts.
61. Conclusiveness of application for probate or administration, if properly made and verified.
62. Petition for probate.
63. In what cases translation of will to be annexed to petition.
Verification of translation by person other than Court translator.
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65. Additional statements in petition for probate, &c.
66. Petition for probate or administration to be signed and verified.
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68. Punishment for false averment in petition or declaration.
69. District Judge may examine petitioner in person,
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70. Caveats against grant of probate or administration.
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72. After entry of caveat, no proceeding taken on petition until after notice to caveator.
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74. Power to transmit statement to District Judge in doubtful cases where no contention.
75. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.
76. Grant of probate to be under seal of Court.
Form of such grant.
77. Grant of letters of administration to be under seal of Court.
Form of such grant.
78. Administration-bond.
79. Assignment of administration-bond.
80. Time before which probate or administration shall not be granted.
81. Filing of original wills of which probate or administration with will annexed granted.
82. Grantee of probate or administration alone to sue, &c., until same revoked.
83. Procedure in contentious cases.
84. Payment to executor or administrator before probate or administration revoked.
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85. Power to refuse letters of administration.
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95. Powers of administrator during minority.
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153. Amendment of Court-fees Act.
154. Amendment of Hindú Wills Act.
155. Validation of grants of probate and administration made in British Burma.
156. Amendment of Act XV of 1877.

An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

Preamble.

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the

Indian Succession Act, 1865, does not apply; It is hereby enacted as follows:—

CHAPTER I.
PRELIMINARY.

Short title. Local extent. Commencement.

1. This Act may be called "The Probate and Administration Act, 1881":

It applies to the whole of British India;

and it shall come into force on the first day of April, 1881.

Personal application.

2. Chapters II to XIII, both inclusive, of this Act shall apply in the case of every Hindú, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865, dying before, on or after the said first day of April, 1881:

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:

Provided also that, except in cases to which the Hindú Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.

Interpretation-clause. "Province." "minor." "minority." "will." "codicil." "specific legacy." "demonstrative legacy." "probate." "executor." "administrator." "administrator." "District Judge."

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

"Province" includes any division of British India having a Court of the last resort:

"minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person:

"will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

"codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will:

"specific legacy" means a legacy of specified property:

"demonstrative legacy" means a legacy directed to be paid out of specified property:

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided:

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor: and

"District Judge" means the judge of a principal civil court of original jurisdiction.

CHAPTER II.
OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

Character and property of executor or administrator as such.

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

Administration with copy annexed of authenticated copy of will proved abroad.

5. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the Province, whether in the British dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor.

6. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

7. The appointment may be express or by necessary implication.

Illustrations.

(*a*.) A wills that C be his executor if B will not. B is appointed executor by implication.

(*b*.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(*c*.) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

Grant of probate to several executors simultaneously or at different times.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first then to A.

Separate probate of codicil discovered after grant of probate.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Effect of probate.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

To whom administration may not be granted.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

Effect of letters of administration.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts not validated by administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Grant of administration where executor has not renounced.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

Form and effect of renunciation of executorship.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Procedure where executor renounces or fails to accept within time limited.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal or residuary legatee.

19. When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Citation before grant of administration to legatee other than universal or residuary.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

To whom administration may be granted.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.
OF LIMITED GRANTS.

(*a*).—*Grants limited in Duration.*

Probate of copy or draft of lost will.

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed will.

25. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of copy where original exists.

26. When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original,

probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Administration until will produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b).—Grants for the Use and Benefit of others having Right.

Administration with will annexed to attorney of absent executor.

28. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above-mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

30. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned.

Administration during minority of sole executor or residuary legatee.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration for use and benefit of lunatic.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

Administration *pendente lite*.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c).—For Special Purposes.

Probate limited to purpose specified in will.

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Administration with will annexed limited to particular purpose.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration limited to trust-property.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Administration limited to suit.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to purpose of becoming party to suit to be brought against administrator.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceased's property.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d).—Grants with Exception.

Probate or administration with will annexed subject to exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Administration with exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e).—Grants of the Rest.

Probate or administration of rest.

44. Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f).—Grants of Effects unadministered.

Grant of effects unadministered.

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

47. When a limited grant has expired by efflux-ion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

What errors may be rectified by Court.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Revocation or annulment for just cause.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—Just cause is—

1*st*, that the proceedings to obtain the grant were defective in substance;

2*nd*, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3*rd*, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4*th*, that the grant has become useless and inoperative through circumstances.

Illustrations.

(*a*). The Court by which the grant was made had no jurisdiction.

(*b*). The grant was made without citing parties who ought to have been cited.

(*c*). The will of which probate was obtained was forged or revoked.

(*d*). A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*). A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f*). Since probate was granted, a later will has been discovered.

(*g*). Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(*h*). The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATE AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, &c.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Power to appoint Delegate of District Judge to deal with non-contentious cases.

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Provided that, in the case of High Courts not established by Royal Charter, such appointment be

made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

District Judge's powers as to grant of probate and administration.

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge may order person to produce testamentary papers.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's Court in relation to probate and administration.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

When probate or administration may be granted by District Judge.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

Disposal of application made to Judge of District in which deceased had no fixed abode.

57. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

Conclusiveness of probate or letters of administration.

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the Province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted:

Effect of unlimited probates, &c., granted by certain Courts.

Provided that probates and letters of administration granted by a High Court established by Royal Charter, or by the Chief Court of the Panjáb, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

Transmission of certificate by Court granting unlimited probate, &c., to other Courts.

60. Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants, a certificate to the following effect:—

I, *A. B.*, Registrar [*or as the case may be*] of the High Court of Judicature at [*or as the case may be*], hereby certify that on the day of 188 the High Court of Judicature at [*or as the case may be*] granted probate of the will [*or* letters of administration of the estate] of *C. D.*, late of deceased, to *E. F.* of and *G. H.* of , and that such probate [*or* letters] has [*or* have] effect over all the property of the deceased throughout the whole of British India;

and such certificate shall be filed by the Court receiving the same.

Conclusiveness of application for probate or administration, if properly made and verified.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Petition for probate.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections twenty-four, twenty-five and twenty-six, a copy, draft or statement of the contents thereof annexed, and stating

the time of the testator's death,

that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

In what cases translation of will to be annexed to petition.

63. In cases wherein the will, copy or draft is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—

Verification of translation by person other than Court translator.

"I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

64. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

Additional statements in petition for probate, &c.

65. Every person applying to any of the Courts mentioned in the proviso to section fifty-nine for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by sections sixty-two and sixty-four, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid;

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section fifty-nine may, if it think fit, reject the same.

Petition for probate or administration to be signed and verified.

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I (*A. B.*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate by one witness to will.

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following:—

"I (*C. D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*) (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

Punishment for false averment in petition or declaration.

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person,

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

to examine the petitioner in person upon oath, and also

require further evidence,

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

and issue citations to inspect proceedings.

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

Publication of citation.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Caveats against grant of probate or administration.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Dele-

gate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

71. The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of *A. B.*, late of , deceased, who died on the day of at without notice to *C. D.* of ."

After entry of caveat, no proceeding taken on petition until after notice to caveator.

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

District Delegate when not to grant probate or administration.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

Power to transmit statement to District Judge in doubtful cases where no contention.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

75. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

Grant of probate to be under seal of Court.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

Grant of letters of administration to be under seal of Court.

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, , Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of letters of administration (with *or* without the will annexed, *as the case may be*) of the property and credits of , late of , deceased, were granted to , the father (*or as the case may be*) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

Administration-bond.

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

Assignment of administration-bond.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time before which probate or administration shall not be granted.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Filing of original wills of which probate or administration with will annexed granted.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him: and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, &c., until same revoked.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

83. In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or administration revoked.

84. Where any probate is, or letters of administration are, revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Right of such executor or administrator to recoup himself.

Power to refuse letters of administration.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindu Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

Appeals from orders of District Judge.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

Concurrent jurisdiction of High Court.

The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

In respect of causes of action surviving deceased, and debts due at death.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

Demands and rights of suit of or against deceased survive to and against executor or administrator.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or grauting it would be nugatory.

Illustration.

(*a*). A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

Power of executor or administrator to dispose of property.

90. An executor or administrator has power, with the consent of the Court by which the probate or letters of administration was or were granted, to dispose of the property of the deceased, either wholly or in part, in such manner as he thinks fit:

Provided that the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

Illustrations.

(*a*). The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it with the consent of the Court. The sale is valid.

(*b*). The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased with the consent of the Court. The mortgage is valid.

Purchase by executor or administrator of deceased's property.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators exercisable by one.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(*a*). One of several executors has power to release a debt due to the deceased.

(*b*). One has power to surrender a lease.

(*c*). One has power to sell the property of the deceased, moveable or immoveable.

(*d*). One has power to assent to a legacy.

(*e*). One has power to endorse a promissory note payable to the deceased.

(*f*). The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

83. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Survival of powers on death of one of several executors or administrators.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator of effects unadministered.

95. An administrator during minority has all the powers of an ordinary administrator.

Powers of administrator during minority.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executrix or administratrix.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral ceremonies.

98. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same has or have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that have come to his hands, and the manner in which they have been applied or disposed of.

Inventory and account.

99. In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India:

Inventory to include property in any part of British India.

And the value of such property situate in each Province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Wages for certain services to be next paid, and then other debts.

104. Save as aforesaid, no creditor is to have a right of priority over another.

Save as aforesaid, all debts to be paid equally and rateably.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

105. Debts of every description must be paid before any legacy.

Debts to be paid before legacies.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

Abatement of general legacies.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Assent necessary to complete legatee's title.

Illustrations.

(*a*). A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b*). A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of assent.

Illustrations.

(*a*). A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*). The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*). A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*). Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*). A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(*a*). A bequeathes to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*). The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person and his assent may in like manner be express or implied.

Assent of executor to his own legacy.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Implied assent.

Illustration.

An executor takes the rent of a house or the interest of Government-securities bequeathed to him, and applies it to his own use. This is assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Effect of executor's assent.

Illustrations.

(*a*). A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b*). A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Executor when to deliver legacies.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity when no time fixed by will.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Date of successive payments when first payment directed to be made within given time, or on day certain.

and if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

Investment of sum bequeathed where legacy, not specific, given for life.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of general legacy, to be paid at future time.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

Procedure when no fund charged with, or appropriated to, annuity.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government-annuity of the specified amount shall be purchased, or,

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

Transfer to residuary legatee or contingent bequest.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Investment of residue bequeathed for life, with direction to invest in specified securities.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Time and manner of conversion and investment.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit:

Interest payable until investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a*). A bequeathes his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*). A bequeathes his Government-securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*). The testator bequeathes all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18 forms part of the residue.

Residuary legatee's title to produce of residuary fund.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

Illustrations.

(*a*). The testator bequeathes the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*). The testator bequeathes the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time fixed for payment of general legacy.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1). Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2). Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3). Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time fixed.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of interest.

132. The rate of interest shall be six per cent. per annum.

No interest on arrears of annuity within first year after testator's death.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest on sum to be invested to produce annuity.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

Refund of legacy paid under Judge's orders.

135. An executor who has paid a legacy under the order of a Judge, is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund when legacy becomes due on performance of condition within further time allowed.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

When each legatee compellable to refund in proportion.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Distribution of assets.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution;

Creditor may follow assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may call upon legatee to refund.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When unsatisfied legatee must first proceed against executor, if solvent.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Limit to refunding of one legatee to another.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

144. The refunding shall in all cases be without interest.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Residue after usual payments to be paid to residuary legatee.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Liability of executor or administrator for devastation.

Illustrations.

(*a*). The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(*b*). The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(*c*). The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

For neglect to get in any part of property.

Illustrations.

(*a*). The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(*b*). The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Provisions applied to administrator with will annexed.

149. Nothing herein contained shall—

Saving-clause.

(*a*) validate any testamentary disposition which would otherwise have been invalid;

(*b*) invalidate any such disposition which would otherwise have been valid;

(*c*) deprive any person of any right of maintenance to which he would otherwise have been entitled; or

(*d*) affect the rights, duties and privileges of the Administrator General of Bengal, Madras or Bombay.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan, Buddhist or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.

151. In Act No. XXVII of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), sections 15 and 16 and the proviso to section 18 shall be repealed.

Repeal of portions of Act XXVII of 1860.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII of 1860, or Bombay Regulation No. VIII of 1827; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding:

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

Grant of probate or administration to supersede certificate under Act XXVII of 1860, or Bombay Regulation VIII of 1827.

153. In the Court-fees Act, 1870, schedule I, Nos. 11 and 12, in the third column, after the words "amount or value," the following shall be inserted, namely:—

"Provided that, when after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant."

Amendment of Court-fees Act.

154. The following amendments shall be made in the Hindú Wills Act, 1870 (namely):—

Amendment of Hindú Wills Act.

(*a*). For the portion of section two commencing with the words "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted.

(*b*). The third clause of section three and the last clause of section six shall be repealed.

(*c*). In section six, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and three" shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindú, Muhammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which, before this Act comes into force have been made in British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

Validation of grants of probate and administration made in British Burma.

156. In the second schedule to the Indian Limitation Act, 1877, No. 48, after the figures "321," the following shall be inserted, namely—"or under the Probate and Administration Act, 1881, section 139 or 140."

Amendment of Act XV of 1877.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January, 1881, and is hereby promulgated for general information:—

ACT No. VI OF 1881.

An Act to make further provision for the grant of Probate and Letters of Administration in non-contentious cases.

WHEREAS it is expedient to make further provision for the grant of probate and letters of administration in non-contentious cases; It is hereby enacted as follows:—

Preamble.

1. This Act may be called "The District Delegates Act, 1881":

Short title.

It extends to the whole of British India;

Extent.

and it shall come into force on the first day of April, 1881.

Commencement.

2. After section 235 of the Indian Succession Act, 1865, the following section shall be added:—

Addition of section after section 235 of Succession Act.

"235A. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Power to appoint Delegate of District Judge to deal with non-contentious cases.

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local [illegible]

[illegible] so appointed shall be called 'District Delegates'."

3. After section 241 of the said Act, the following section shall be added:—

Addition of section after section 241 of same [illegible]

"241A. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him [illegible] in which there is no contention, if it [illegible] by petition (verified as hereinafter mentioned) that the testator or intestate, as the case [illegible] time of his death resided within [illegible] of such Delegate."

Power to grant probate and letters of administration in uncontentious cases.

4. In sections 244 and 246 of the said Act, respectively, the following words shall be added:—

Addition of words after [illegible] of same Act.

"and where the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate."

5. For section 251 of the said Act, the following section shall be substituted:—

Substitution of section for section 251 of same Act.

"251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same."

Caveats against grant of probate or administration.

6. In section 253 of the said Act, after the word "Judge" the words "or officer," and after the word "made" the words "or notice has been given of its entry with some other Delegate," shall be inserted.

Amendment of section 253 of same Act.

7. After section 253 of the said Act, the following sections shall be added:—

Addition of sections after section 253 of same Act.

"253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

District Delegate when not to grant probate or administration.

"*Explanation.*—By 'contention' is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly [illegible] to act on his behalf to oppose the proceeding.

"253B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may [illegible] any further proceeding by the District Delegate in

Power to transmit statement to District Judge in doubtful cases where no contention.

4 f.

relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

"253C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge."

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

8. In the said Act, sections 254 and 255, respectively, after the words "1, Judge of the District of ," the words "(*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*))"; and in section 308, after the words "District Judge by whom" the words "or by whose District Delegate" shall be inserted.

Amendment of sections 254, 255 and 308 of same Act.

9. In the said Act, sections 246, 250, 255 and 259, after the words "District Judge," and in section 250 and section 254 (when it first occurs) after the word "Judge," the words "or District Delegate" shall be inserted respectively.

Introduction of the words "or District Delegate" in certain sections of same Act.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January, 1881, and is hereby promulgated for general information:—

ACT No. VII OF 1881.

An Act to amend Bengal Act No. IX of 1880 (the Cess Act, 1880).

WHEREAS it is expedient to amend Bengal Act No. IX of 1880 (the Cess Act, 1880); It is hereby enacted as follows:—

Preamble.

1. In the said Act, after section sixty-four, the following sections shall be inserted, and shall be deemed to have been so inserted on and from the date on which such Act came into force:—

Amendment of Bengal Act No. IX of 1880.

"64A. All sums due to the holder of any estate or tenure under the provisions of this chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same, by any means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation:

"Provided that, if any such objection as is mentioned in section 53, has been made before the Collector, no proceedings shall be commenced, and no proceedings which have been commenced shall be continued, for recovery of cess in respect of the lands which are the subject of such objection, until such objection shall have been disposed of by the Collector.

Holders of estates, &c., how to recover from holders of rent-free lands.

"64B. In every suit for the recovery of any such sum, the person to whom the sum is due may proceed at his option either against the owner or holder of the rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and be followed by the same consequences in respect of the execution of such decree against the owner or holder of such land, and in respect of the sale of such land in such execution, as if the suit had been brought and the decree given against such owner or holder of such land, but shall have effect against such occupier personally so long only as he remains in occupation of such land, and no longer."

Owner, holder or occupier of rent-free lands may be sued.
Decree against occupier tantamount to decree against owner.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 5, 1881.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th January, 1881, and is hereby promulgated for general information:—

ACT No. III OF 1881.

An Act to provide for certain matters relating to Securities of the Government of India.

Preamble.

WHEREAS the Governor General in Council has determined to issue, in respect of the four and a half per cent. loan of 1880, certificates declaring the bearers thereof entitled to the principal sums specified therein, and coupons for the interest payable on such principal sums;

and whereas the Governor General in Council may from time to time desire to issue like certificates, with or without like coupons, in respect of other loans;

and whereas it is expedient to declare the mode in which the title to such certificates and coupons shall be transferable;

and whereas it is also expedient to provide for certain other matters relating to all securities of the Government of India; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Indian Securities Act, 1881"; and shall come into force at once.

"Government securities."

2. In this Act, "Government securities" includes promissory notes, debentures, loan-certificates, coupons and all other securities issued by the Government of India, whether before or after the passing of this Act.

Certificates and coupons may be transferred and discharged like promissory notes payable to bearer.

3. Whenever the Governor General in Council has issued, in respect of any loan, a certificate declaring the bearer thereof to be entitled to the portion of the loan therein expressed, or a coupon for any amount payable as interest on any portion of such loan, the title to such certificate or coupon may be transferred as if the certificate or coupon were a promissory note payable to bearer;

and, on payment, by or on behalf of the Government, to the bearer of such certificate or coupon, of the amount expressed therein, at or after the date on which it becomes due, the Government shall be discharged as if such certificate or coupon were a promissory note payable to bearer.

No notice of trust.

4. No notice of any trust in respect of any Government security shall be receivable by the Government.

Indorser of Government security not liable for amount thereof.

5. No person shall, merely by reason of his having endorsed any Government security, be liable to pay any money due, whether on account of principal or interest, thereunder.

Signature to Government securities may be printed, &c.

6. The signature of the officer of the Government of India authorized to sign any Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct, on such securities.

Any such signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if the same had been subscribed in the proper handwriting of such officer.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th January, 1881, and is hereby promulgated for general information:—

ACT No. IV OF 1881.

An Act to enhance the rate of Port-dues leviable at Madras.

Preamble.

WHEREAS it has been determined to construct an artificial harbour for the port of Madras and to defray a portion of the interest on the principal sum expended on the construction of such harbour and of the annual expenses of maintaining the same out of the dues leviable on sea-going vessels of fifteen tons and upwards entering the said port:

And whereas the maximum rate of such dues is fixed by the Indian Ports Act, 1875, section forty-five, and the third part of the first schedule thereto annexed, and the amount of such rate is insufficient to defray such portion of the said interest and expenses in addition to the other charges to meet which the said dues are applicable:

And whereas it is therefore necessary to enhance, to the extent hereinafter mentioned, the maximum rate of dues so leviable;

It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Madras Port-dues Act, 1881"; and

It shall come into force as soon as the said harbour is, in the opinion of the Local Government, open for the use of sea-going vessels of fifteen tons and upwards, and the said Government has published, in the *Fort St. George Gazette*, a notification to that effect.

Amendment of Part III of the third schedule of Act XII of 1875.

2. In the Indian Ports Act, 1875, first schedule, Part III, the following amendments shall be made, that is to say:—

(*a*) in the first column, the numeral and word "9, Madras" shall be omitted;

(*b*) in the first column, above the heading "*Eastern Group,*" the word "Madras" shall be inserted; and

(*c*) opposite the word "Madras" so inserted there shall be inserted—

(1) in the second column, the words "sea-going vessels of fifteen tons and upwards"; and

(2) in the third column, the words "not exceeding eight annas per ton: Provided that, in the case of vessels employed in the coasting trade not being steamers, the rates shall be one-half the rates chargeable in respect of other vessels."

Certain provisions of that Part to apply to Madras.

3. The provisions contained in the fourth column of the said Part shall, so far as they are applicable, apply to the Port of Madras.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January, 1881, and is hereby promulgated for general information:—

ACT No. V OF 1881.

THE PROBATE AND ADMINISTRATION ACT, 1881.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
Local extent.
Commencement.
2. Personal application.
3. Interpretation-clause.

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. Character and property of executor or administrator as such.
5. Administration with copy annexed of authenticated copy of will proved abroad.
6. Probate only to appointed executor.
7. Appointment express or implied.
8. Persons to whom probate cannot be granted.
9. Grant of probate to several executors simultaneously or at different times.
10. Separate probate of codicil discovered after grant of probate.
Procedure when different executors appointed by codicil.
11. Accrual of representation to surviving executor.
12. Effect of probate.
13. To whom administration may not be granted.
14. Effect of letters of administration.
15. Acts not validated by administration.
16. Grant of administration where executor has not renounced.
Exception.
17. Form and effect of renunciation of executorship.
18. Procedure where executor renounces or fails to accept within time limited.
19. Grant of administration to universal or residuary legatee.
20. Right to administration of representative of deceased residuary legatee.
21. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.
22. Citation before grant of administration to legatee other than universal or residuary.
23. To whom administration may be granted.

CHAPTER III.

OF LIMITED GRANTS.

(*a*).—*Grants limited in Duration.*

24. Probate of copy or draft of lost will.
25. Probate of contents of lost or destroyed will.
26. Probate of copy where original exists.
27. Administration until will produced.

(*b*).—*Grants for the Use and Benefit of others having Right.*

28. Administration, with will annexed, to attorney of absent executor.
29. Administration, with will annexed, to attorney of absent person, who, if present, would be entitled to administer.
30. Administration to attorney of absent person entitled to administer in case of intestacy.
31. Administration during minority of sole executor or residuary legatee.
32. Administration during minority of several executors or residuary legatees.
33. Administration for use and benefit of lunatic.
34. Administration *pendente lite*.

(*c*).—*For Special Purposes.*

35. Probate limited to purpose specified in will.
36. Administration with will annexed limited to particular purpose.
37. Administration limited to trust-property.
38. Administration limited to suit.
39. Administration limited to purpose of becoming party to suit to be brought against administrator.
40. Administration limited to collection and preservation of deceased's property.
41. Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

(*d*).—*Grants with Exception.*

42. Probate or administration with will annexed subject to exception.
43. Administration with exception.

(*e*).—*Grants of the Rest.*

44. Probate or administration of rest.

(*f*).—*Grants of Effects unadministered.*

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45. Grant of effects unadministered.
46. Rules as to grants of effects unadministered.
47. Administration when limited grant expired, and still some part of estate unadministered.

CHAPTER IV.

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48. What errors may be rectified by Court.
49. Procedure where codicil discovered after grant of administration with will annexed.
50. Revocation or annulment for just cause.
"Just cause."

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

51. Jurisdiction of District Judge in granting and revoking probates, &c.
52. Power to appoint Delegate of District Judge to deal with non-contentious cases.
53. District Judge's powers as to grant of probate and administration.
54. District Judge may order person to produce testamentary papers.
55. Proceedings of District Judge's Court in relation to probate and administration.
56. When probate or administration may be granted by District Judge.
57. Disposal of application made to Judge of district in which deceased had no fixed abode.
58. Probate and letters of administration may be granted by Delegate.
59. Conclusiveness of probate or letters of administration.
Effect of unlimited probates, &c., granted by certain Courts.
60. Transmission of certificate by Court granting unlimited probate, &c., to other Courts.
61. Conclusiveness of application for probate or administration, if properly made and verified.
62. Petition for probate.
63. In what cases translation of will to be annexed to petition.
Verification of translation by person other than Court translator.
64. Petition for letters of administration.
65. Additional statements in petition for probate, &c.
66. Petition for probate or administration to be signed and verified.
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68. Punishment for false averment in petition or declaration.
69. District Judge may examine petitioner in person,
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Publication of citation.
70. Caveats against grant of probate or administration.
71. Form of caveat.

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72. After entry of caveat, no proceeding taken on petition until after notice to caveator.
73. District Delegate when not to grant probate or administration.
74. Power to transmit statement to District Judge in doubtful cases where no contention.
75. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.
76. Grant of probate to be under seal of Court.
Form of such grant.
77. Grant of letters of administration to be under seal of Court.
Form of such grant.
78. Administration-bond.
79. Assignment of administration-bond.
80. Time before which probate or administration shall not be granted.
81. Filing of original wills of which probate or administration with will annexed granted.
82. Grantee of probate or administration alone to sue, &c., until same revoked.
83. Procedure in contentious cases.
84. Payment to executor or administrator before probate or administration revoked.
Right of such executor or administrator to recoup himself.
85. Power to refuse letters of administration.
86. Appeals from orders of District Judge.
87. Concurrent jurisdiction of High Court.

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88. In respect of causes of action surviving deceased, and debts due at death.
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90. Power of executor or administrator to dispose of property.
91. Purchase by executor or administrator of deceased's property.
92. Powers of several executors or administrators exercisable by one.
93. Survival of powers on death of one of several executors or administrators.
94. Powers of administrator of effects unadministered.
95. Powers of administrator during minority.
96. Powers of married executrix or administratrix.

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OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

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98. Inventory and account.
99. Inventory to include property in any part of British India.
100. As to property of, and debts owing to, deceased.
101. Expenses to be paid before all debts.
102. Expenses to be paid next after such expenses.
103. Wages for certain services to be next paid, and then other debts.

SECTIONS.

104. Save as aforesaid, all debts to be paid equally and rateably.
105. Debts to be paid before legacies.
106. Executor or administrator not bound to pay legacies without indemnity.
107. Abatement of general legacies.
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108. Non-abatement of specific legacy when assets sufficient to pay debts.
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111. Legacies treated as general for purpose of abatement.

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Nature of assent.
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130. Interest when no time fixed for payment of general legacy.
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132. Rate of interest.
133. No interest on arrears of annuity within first year after testator's death.
134. Interest on sum to be invested to produce annuity.

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139. Distribution of assets.
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140. Creditor may call upon legatee to refund.
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150. Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.
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154. Amendment of Hindú Wills Act.
155. Validation of grants of probate and administration made in British Burma.
156. Amendment of Act XV of 1877.

An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

Preamble.

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the

Indian Succession Act, 1865, does not apply; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The Probate and Administration Act, 1881":

Local extent. It applies to the whole of British India;

Commencement. and it shall come into force on the first day of April, 1881.

Personal application. 2. Chapters II to XIII, both inclusive, of this Act shall apply in the case of every Hindú, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865, dying before, on or after the said first day of April, 1881:

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:

Provided also that, except in cases to which the Hindú Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.

Interpretation-clause. 3. In this Act, unless there be something repugnant in the subject to context,—

"Province" includes any division of British India having a Court of the last resort:

"Province:"

"minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person:

"minor:"

"minority:"

"will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

"will:"

"codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will:

"codicil:"

"specific legacy" means a legacy of specified property:

"specific legacy:"

"demonstrative legacy" means a legacy directed to be paid out of specified property:

"demonstrative legacy:"

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

"probate:"

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided:

"executor:"

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor: and

"administrator:"

"District Judge" means the judge of a principal civil court of original jurisdiction.

"District Judge."

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

Character and property of executor or administrator as such. 4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

Administration with copy annexed of authenticated copy of will proved abroad. 5. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the Province, whether in the British dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor. 6. Probate can be granted only to an executor appointed by the will.

Appointment express or implied. 7. The appointment may be express or by necessary implication.

Illustrations.

(*a.*) A wills that C be his executor if B will not. B is appointed executor by implication.

(*b.*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law [illegible] adds, "but should the within-named C be not living [illegible] tute and appoint B my whole and sole executrix." [illegible] appointed executrix by implication. C is

(*c.*) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted. 8. Probate cannot be granted to any person who is a minor or is of unsound mind.

Grant of probate to several executors simultaneously or at different times. 9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first then to A.

Separate probate of codicil discovered after grant of probate. 10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor [illegible] no way repeals the appointment of executors made by the will.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Procedure when different executors appointed by codicil.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Accrual of representation to surviving executor.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Effect of probate.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

To whom administration may not be granted.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Effect of letters of administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Acts not validated by administration.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

Grant of administration where executor has not renounced.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

17. Renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Form and effect of renunciation of executorship.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Procedure where executor renounces or fails to accept within time limited.

19. When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Grant of administration to universal or residuary legatee.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Right to administration of representative of deceased residuary legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

Citation before grant of administration to legatee other than universal or residuary.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

To whom administration may be granted.

CHAPTER III.

OF LIMITED GRANTS.

(*a*).—*Grants limited in Duration.*

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of copy or draft of lost will.

25. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of contents of lost or destroyed will.

26. When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original,

Probate of copy where original exists.

probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Administration until will produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b).—Grants for the Use and Benefit of others having Right.

Administration with will annexed to attorney of absent executor.

28. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above-mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

30. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned.

Administration during minority of sole executor or residuary legatee.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration for use and benefit of lunatic.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

Administration *pendente lite*.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c).—For Special Purposes.

Probate limited to purpose specified in will.

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Administration with will annexed limited to particular purpose.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration limited to trust-property.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Administration limited to suit.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to purpose of becoming party to suit to be brought against administrator.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceased's property.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d).—Grants with Exception.

Probate or administration with will annexed subject to exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Administration with exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e).—Grants of the Rest.

Probate or administration of rest.

44. Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f).—Grants of Effects unadministered.

Grant of effects unadministered.

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

47. When a limited grant has expired by efflux-ion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

What errors may be rectified by Court.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Revocation or annulment for just cause.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—Just cause is—

1*st*, that the proceedings to obtain the grant were defective in substance;

2*nd*, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3*rd*, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4*th*, that the grant has become useless and inoperative through circumstances.

Illustrations.

(*a*). The Court by which the grant was made had no jurisdiction.

(*b*). The grant was made without citing parties who ought to have been cited.

(*c*). The will of which probate was obtained was forged or revoked.

(*d*). A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*). A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f*). Since probate was granted, a later will has been discovered.

(*g*). Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(*h*). The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, &c.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Power to appoint Delegate of District Judge to deal with non-contentious cases.

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Provided that, in the case of High Courts not established by Royal Charter, such appointment be

made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

District Judge's powers as to grant of probate and administration.

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge may order person to produce testamentary papers.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's Court in relation to probate and administration.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

When probate or administration may be granted by District Judge.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

Disposal of application made to Judge of District in which deceased had no fixed abode.

57. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

Conclusiveness of probate or letters of administration.

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the Province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted:

Effect of unlimited probates, &c., granted by certain Courts.

Provided that probates and letters of administration granted by a High Court established by Royal Charter, or by the Chief Court of the Panjáb, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

Transmission of certificate by Court granting unlimited probate, &c., to other Courts.

60. Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants, a certificate to the following effect:—

I, *A. B.*, Registrar [*or as the case may be*] of the High Court of Judicature at [*or as the case may be*], hereby certify that on the day of 188 the High Court of Judicature at [*or as the case may be*] granted probate of the will [*or* letters of administration of the estate] of *C. D.*, late of deceased, to *E. F.* of and *G. H.* of , and that such probate [*or* letters] has [*or* have] effect over all the property of the deceased throughout the whole of British India;

and such certificate shall be filed by the Court receiving the same.

Conclusiveness of application for probate or administration, if properly made and verified.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Petition for probate.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections twenty-four, twenty-five and twenty-six, a copy, draft or statement of the contents thereof annexed, and stating

the time of the testator's death,

that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

In what cases translation of will to be annexed to petition.

63. In cases wherein the will, copy or draft is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—

Verification of translation by person other than Court translator.

"I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

64. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

Additional statements in petition for probate, &c.

65. Every person applying to any of the Courts mentioned in the proviso to section fifty-nine for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by sections sixty-two and sixty-four, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section fifty-nine may, if it think fit, reject the same.

Petition for probate or administration to be signed and verified.

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I (*A. B.*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate by one witness to will.

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following:—

"I (*C. D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*) (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

Punishment for false averment in petition or declaration.

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person,

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

to examine the petitioner in person upon oath, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

require further evidence,

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

and issue citations to inspect proceedings.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Publication of citation.

Caveats against grant of probate or administration.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Dele-

gate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

71. The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of *A. B.*, late of , deceased, who died on the day of at without notice to *C. D.* of ."

After entry of caveat, no proceeding taken on petition until after notice to caveator.

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

District Delegate when not to grant probate or administration.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

Power to transmit statement to District Judge in doubtful cases where no contention.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

75. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

Grant of probate to be under seal of Court.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, Judge of the District of ,

Form of such grant.

[*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

Grant of letters of administration to be under seal of Court.

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, , Judge of the District of ,

Form of such grant.

[*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of letters of administration (with *or* without the will annexed, *as the case may be*) of the property and credits of late of , deceased, were granted to , the father (*or as the case may be*) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

Administration-bond.

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

Assignment of administration-bond.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time before which probate or administration shall not be granted.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Filing of original wills of which probate or administration with will annexed granted.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him: and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, &c., until same revoked.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

83. In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or administration revoked.

84. Where any probate is, or letters of administration are, revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Right of such executor or administrator to recoup himself.

Power to refuse letters of administration.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindú Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

Appeals from orders of District Judge.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

Concurrent jurisdiction of High Court.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

In respect of causes of action surviving deceased, and debts due at death.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

Demands and rights of suit of or against deceased survive to and against executor or administrator.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

(*a*). A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

Power of executor or administrator to dispose of property.

90. An executor or administrator has power, with the consent of the Court by which the probate or letters of administration was or were granted, to dispose of the property of the deceased, either wholly or in part, in such manner as he thinks fit:

Provided that the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

Illustrations.

(*a*). The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it with the consent of the Court. The sale is valid.

(*b*). The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased with the consent of the Court. The mortgage is valid.

Purchase by executor or administrator of deceased's property.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators exercisable by one.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(*a*). One of several executors has power to release a debt due to the deceased.

(*b*). One has power to surrender a lease.

(*c*). One has power to sell the property of the deceased, moveable or immoveable.

(*d*). One has power to assent to a legacy.

(*e*). One has power to endorse a promissory note payable to the deceased.

(*f*). The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Survival of powers on death of one of several executors or administrators.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator of effects unadministered.

95. An administrator during minority has all the powers of an ordinary administrator.

Powers of administrator during minority.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executrix or administratrix.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral ceremonies.

98. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same has or have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that have come to his hands, and the manner in which they have been applied or disposed of.

Inventory and account.

99. In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India:

And the value of such property situate in each Province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

Inventory to include property in any part of British India.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Wages for certain services to be next paid, and then other debts.

104. Save as aforesaid, no creditor is to have a right of priority over another.

Save as aforesaid, all debts to be paid equally and rateably.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

105. Debts of every description must be paid before any legacy.

Debts to be paid before legacies.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

Abatement of general legacies.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Assent necessary to complete legatee's title.

Illustrations.

(*a*). A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b*). A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of assent.

Illustrations.

(*a*). A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*). The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*). A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*). Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*). A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(*a*). A bequeathes to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*). The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person and his assent may in like manner be express or implied.

Assent of executor to his own legacy.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Implied assent.

Illustration.

An executor takes the rent of a house or the interest of Government-securities bequeathed to him, and applies it to his own use. This is assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Effect of executor's assent.

Illustrations.

(*a*). A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b*). A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Executor when to deliver legacies.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity when no time fixed by will.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Date of successive payments when first payment directed to be made within given time, or on day certain.

and if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

Investment of sum bequeathed where legacy, not specific, given for life.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of general legacy, to be paid at future time.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

Procedure when no fund charged with, or appropriated to, annuity.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government-annuity of the specified amount shall be purchased, or,

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

Transfer to residuary legatee or contingent bequest.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Investment of residue bequeathed for life, with direction to invest in specified securities.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Time and manner of conversion and investment.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit:

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Interest payable until investment.

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a*). A bequeathes his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*). A bequeathes his Government-securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*). The testator bequeathes all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18 forms part of the residue.

Residuary legatee's title to produce of residuary fund.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

Illustrations.

(*a*). The testator bequeathes the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*). The testator bequeathes the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time fixed for payment of general legacy.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1). Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2). Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3). Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time fixed.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of interest.

132. The rate of interest shall be six per cent. per annum.

No interest on arrears of annuity within first year after testator's death.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest on sum to be invested to produce annuity.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

Refund of legacy paid under Judge's orders.

135. An executor who has paid a legacy under the order of a Judge, is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund when legacy becomes due on performance of condition within further time allowed.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

When each legatee compellable to refund in proportion.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Distribution of assets.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution;

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

Creditor may call upon legatee to refund.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to contribute under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When unsatisfied legatee must first proceed against executor, if solvent.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Limit to refunding of one legatee to another.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

144. The refunding shall in all cases be without interest.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Residue after usual payments to be paid to residuary legatee.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Liability of executor or administrator for devastation.

Illustrations.

(*a*). The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(*b*). The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(*c*). The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

For neglect to get in any part of property.

Illustrations.

(*a*). The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(*b*). The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Provisions applied to administrator with will annexed.

149. Nothing herein contained shall—

Saving-clause.

(*a*) validate any testamentary disposition which would otherwise have been invalid;

(*b*) invalidate any such disposition which would otherwise have been valid;

(*c*) deprive any person of any right of maintenance to which he would otherwise have been entitled; or

(*d*) affect the rights, duties and privileges of the Administrator General of Bengal, Madras or Bombay.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan, Buddhist or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.

151. In Act No. XXVII of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), sections 15 and 16 and the proviso to section 13 shall be repealed.

Repeal of portions of Act XXVII of 1860.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII of 1860, or Bombay Regulation No. VIII of 1827; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding:

Grant of probate or administration to supersede certificate under Act XXVII of 1860, or Bombay Regulation VIII of 1827.

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. In the Court-fees Act, 1870, schedule I, Nos. 11 and 12, in the third column, after the words "amount or value," the following shall be inserted, namely:—

Amendment of Court-fees Act.

"Provided that, when after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant."

154. The following amendments shall be made in the Hindú Wills Act, 1870 (namely):—

Amendment of Hindú Wills Act.

(*a*). For the portion of section two commencing with the words "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted.

(*b*). The third clause of section three and the last clause of section six shall be repealed.

(*c*). In section six, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and three" shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindú, Muhammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which, before this Act comes into force have been made in British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

Validation of grants of probate and administration made in British Burma.

156. In the second schedule to the Indian Limitation Act, 1877, No. 43, after the figures "321," the following shall be inserted, namely—"or under the Probate and Administration Act, 1881, section 189 or 140."

Amendment of Act XV of 1877.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January, 1881, and is hereby promulgated for general information :—

ACT No. VI OF 1881.

An Act to make further provision for the grant of Probate and Letters of Administration in non-contentious cases.

Preamble.

WHEREAS it is expedient to make further provision for the grant of probate and letters of administration in non-contentious cases; It is hereby enacted as follows :—

Short title.

1. This Act may be called "The District Delegates Act, 1881":

Extent.

It extends to the whole of British India;

Commencement.

and it shall come into force on the first day of April, 1881.

Addition of section after section 235 of Succession Act.

2. After section 235 of the Indian Succession Act, 1865, the following section shall be added :—

Power to appoint Delegate of District Judge to deal with non-contentious cases.

"235A. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe :

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

"Persons so appointed shall be called 'District Delegates'."

Addition of section after section 241 of same Act.

3. After section 241 of the said Act, the following section shall be added :—

Probate and letters of administration may be granted by Delegate.

"241A. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate."

Addition to sections 244 and 246 of same Act.

4. To sections 244 and 246 of the said Act, respectively, the following words shall be added :—"and when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate."

Substitution of section for section 251 of same Act.

5. For section 251 of the said Act, the following section shall be substituted :—

Caveats against grant of probate or administration.

"251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same."

Amendment of section 253 of same Act.

6. In section 253 of the said Act, after the word "Judge" the words "or officer," and after the word "made" the words "or notice has been given of its entry with some other Delegate," shall be inserted.

Additions of sections after section 253 of same Act.

7. After section 253 of the said Act, the following sections shall be added :—

District Delegate when not to grant probate or administration.

"253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

"*Explanation.*—By 'contention' is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf to oppose the proceeding.

Power to transmit statement to District Judge in doubtful cases where no contention.

"253B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in

4 f

relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

"253C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge."

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

8. In the said Act, sections 254 and 255, respectively, after the words "I, Judge of the District of ," the words "(*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*))"; and in section 308, after the words "District Judge by whom" the words "or by whose District Delegate" shall be inserted.

Amendment of sections 254, 255 and 308 of same Act.

9. In the said Act, sections 246, 250, 255 and 259, after the words "District Judge," and in section 250 and section 254 (when it first occurs) after the word "Judge," the words "or District Delegate" shall be inserted respectively.

Introduction of the words "or District Delegate" in certain sections of same Act.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January, 1881, and is hereby promulgated for general information:—

ACT No. VII OF 1881.

An Act to amend Bengal Act No. IX of 1880 (the Cess Act, 1880).

WHEREAS it is expedient to amend Bengal Act No. IX of 1880 (the Cess Act, 1880); It is hereby enacted as follows:—

Preamble.

1. In the said Act, after section sixty-four, the following sections shall be inserted, and shall be deemed to have been so inserted on and from the date on which such Act came into force:—

Amendment of Bengal Act No. IX of 1880.

"64A. All sums due to the holder of any estate or tenure under the provisions of this chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same, by any means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation:

Holders of estates, &c., how to recover from holders of rent-free lands.

"Provided that, if any such objection as is mentioned in section 53, has been made before the Collector, no proceedings shall be commenced, and no proceedings which have been commenced shall be continued, for recovery of cess in respect of the lands which are the subject of such objection, until such objection shall have been disposed of by the Collector.

"64B. In every suit for the recovery of any such sum, the person to whom the sum is due may proceed at his option either against the owner or holder of the rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and be followed by the same consequences in respect of the execution of such decree against the owner or holder of such land, and in respect of the sale of such land in such execution, as if the suit had been brought and the decree given against such owner or holder of such land, but shall have effect against such occupier personally so long only as he remains in occupation of such land, and no longer."

Owner, holder or occupier of rent-free lands may be sued.
Decree against occupier tantamount to decree against owner.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 12, 1881.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 5th February, 1881, and is hereby promulgated for general information:—

ACT No. VIII OF 1881.

THE PETROLEUM ACT, 1881.

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   Local extent.
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4. Dangerous petroleum in quantities exceeding 40 gallons.
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7. Power to make rules as to the importation of petroleum.
8. Possession and transport of petroleum.
9. Power to make rules as to such possession and transport.
10. Power to inspect and require dealer to sell samples.
11. Notice to be given when officer proposes to test samples.
12. Certificate as to result of such testing.

Penalties.

13. Penalty for illegal importation, &c., of petroleum.
14. Penalty for keeping, transporting, selling or exposing for sale petroleum in contravention of section 6.
15. Penalty for refusing to comply with section 10.
16. Confiscation of petroleum.
17. Jurisdiction.

Miscellaneous.

18. Rules when to have force of law.
19. Power to apply this Act to other fluids.

THE SCHEDULE.

An Act to regulate the importation, possession and transport of Petroleum and other fluids of a like nature.

WHEREAS it is expedient to regulate the importation, possession and transport of petroleum and other fluids of a like nature; It is hereby enacted as follows:— Preamble.

Preliminary.

Short title. 1. This Act may be called "The Petroleum Act, 1881"; Commencement. and it shall come into force on the first day of July, 1881.

Local extent. The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct.

Repeal of enactments. 2. The Indian Ports Act, 1875, section thirty-seven, and Bengal Act No. III of 1865 (*to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of Inflammable Oils in Ports and places within the Provinces under the control of the Lieutenant-Governor of Bengal*) are hereby repealed.

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

"petroleum" includes also the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, kerosine, paraffine oil, mineral oil, petroline, gasoline, benzol, benzoline, benzine and any inflammable liquid that is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any products of petroleum,

"petroleum:"

but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer.

Explanation.—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus and in the manner described in the Schedule hereto annexed:

"dangerous petroleum" means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer:

"dangerous petroleum:"

"import" means to bring into British India by sea or land:

"import:"

and "importation" means the bringing into British India as aforesaid:

"transport" means to remove from one place to another within British India.

"transport:"

Dangerous Petroleum.

4. No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported, or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

Dangerous petroleum in quantities exceeding 40 gallons.

Application for license to import, transport or possess such petroleum.

Every application for such a license shall be in writing, and shall declare—

(*a*) the quantity of such petroleum which it is desired to import, transport or possess, as the case may be;

(*b*) the purpose for which the applicant believes that such petroleum will be used; and

(*c*) that petroleum other than dangerous petroleum cannot be used for such purpose.

Power to grant license.

If the Local Government sees reason to believe that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit.

5. No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license:

Dangerous petroleum in quantities not exceeding 40 gallons.

Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware or metal vessels, each of which contains not more than a pint and is securely stopped.

Vessels containing dangerous petroleum to be marked.

6. All dangerous petroleum—

(*a*) which is kept at any place after seven days from the date on which it is imported, or

(*b*) which is transported, or

(*c*) which is sold or exposed for sale,

shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof.

Petroleum generally.

7. The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum, and in particular—

Power to make rules as to the importation of petroleum.

(*a*) for ascertaining the quantity and description of any petroleum on board a ship;

(*b*) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof;

(*c*) to determine the ports at which only petroleum may be imported; and

(*d*) to regulate the time and mode of, and the precautions to be taken on, landing or transhipping any petroleum.

In this section—

"ship" includes anything made for the conveyance by water of human beings or property:

"ship:"

"master" includes every person (except a Pilot or Harbour Master) having for the time being the charge or control of a ship.

"master."

8. No quantity of petroleum exceeding five hundred gallons shall be kept by any one person or on the same premises or shall be transported except under, and in accordance with the conditions of, a license granted under this Act.

Possession and transport of petroleum.

9. The Local Government may, from time to time, make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

Power to make rules as to such possession and transport.

Such rules may provide for the following among other matters, that is to say—

in the case of licenses to possess petroleum—

(*a*) the nature and situation of the premises for which they may be granted, and

(*b*) the inspection of such premises and the testing of petroleum found thereon;

in the case of licenses to transport petroleum—

(*c*) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(*d*) the stoppage and inspection of it during transit;

in the case of both such licenses—

(*e*) the authority by which the license may be granted;

(*f*) the fee to be charged for it;

(*g*) the quantity of petroleum it is to cover;

(*h*) the conditions which may be inserted in it;

(*j*) the time during which it is to continue in force; and

(*k*) the renewal of the license.

10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples.

Power to inspect and require dealer to sell samples.

11. When any such officer has, in exercise of the powers conferred by section ten, or by purchase, obtained a sample of petroleum in the possession of a

Notice to be given when officer proposes to test samples.

dealer, he may give a notice in writing to such dealer informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his agent may be present at such testing.

12. On any such testing, if it appears to the officer or other person so testing that the petroleum from which such sample has been taken is or is not dangerous petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein; and a certified copy of such certificate shall be given gratis to the dealer at his request.

Certificate as to result of such testing.

Penalties.

13. Any person who, in contravention of this Act or of any rules made hereunder, imports, possesses or transports any petroleum, and any person who otherwise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Penalty for illegal importation, &c., of petroleum.

14. Any person keeping, transporting, selling or exposing for sale petroleum in vessels not marked or labelled as prescribed by section six shall be punished with fine which may extend to fifty rupees.

Penalty for keeping, transporting, selling or exposing for sale petroleum in contravention of section 6.

15. Any dealer in petroleum who refuses or neglects to show to any officer authorized under section ten any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

Penalty for refusing to comply with section 10.

16. In any case in which an offence under section thirteen or section fourteen has been committed, the convicting Magistrate may direct that—

Confiscation of petroleum.

(*a*) the petroleum in respect of which the offence has been committed, or

(*b*) where the offender is importing or transporting or is in possession of any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing, or transporting, or is in possession of,

shall, together with the tins or other vessels in which it is contained, be confiscated.

17. The criminal jurisdiction under this Act shall, in the towns of Calcutta, Madras and Bombay, be exercised by a Presidency Magistrate, and elsewhere by a Magistrate of the first class or (where specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class.

Jurisdiction.

Miscellaneous.

18. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law:

Rules when to have force of law.

Provided that no such rule shall be so published without the previous sanction of the Governor General in Council.

19. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by such notification fix, in substitution for the quantities of petroleum fixed by sections four, five and eight, the quantities of such fluid to which these sections shall apply.

Power to apply this Act to other fluids.

The Governor General in Council may by a like notification cancel any notification issued under this section.

THE SCHEDULE.

Specification explanatory of the Test Apparatus.

The following is a description of the details of the apparatus:—

The oil-cup consists of a cylindrical vessel 2″ diameter, $2\frac{2}{10}$″ height (internal), with outward projecting rim $\frac{5}{10}$″ wide, $\frac{3}{8}$″ from the top and $1\frac{7}{8}$″ from the bottom of the cup. It is made of gun-metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}$″. The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.) which carries the thermometer and test-lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate: it is provided with a spout the mouth of which is $\frac{1}{16}$″ in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{2}$″ below the centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{6}{10}$″ by $\frac{4}{10}$″, and two smaller ones, $\frac{8}{10}$″ by $\frac{2}{10}$″, close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3″ diameter and $2\frac{1}{2}$″ height, and an outer one of $5\frac{1}{2}$″ diameter and $5\frac{3}{4}$″ height; they are soldered to a circular copper plate (20 B. W. G.) perforated in the centre, which forms the top of the

bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}''$, that is, its diameter is about $\frac{6}{8}''$ greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened, by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil-cup. The exact distance between the sides and bottom of the bath of the oil-lamp is $1\frac{1}{2}''$. A split socket similar to that on the cover of the oil-cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}''$. One of the three legs of the stand serves as support for the spirit-lamp, attached to it by means of a small swing bracket. The distance of the wick-holder from the bottom of the bath is $1''$.

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing-point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}''$ measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{2}''$.

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

Directions for applying the Test.

1. The test-apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water-bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test-lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape-oil up to the lower edge of the opening of the spout or wick-tube. The lamp is trimmed so that when lighted it gives a flame of about 0·15 of an inch diameter, and this size of flame, which is represented by the projecting white bead on the cover of the oil-cup, is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil-lamp, and for this purpose a test-flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and, if it exceeds 65°, the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test-lamp is then placed in position upon the lid of the cup, the lead line or pendulum,* which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66°, the operation of testing is to be commenced, the test-flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test-apparatus to determine the flashing-points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air-chamber which surrounds the cup is filled with cold water to a depth of $1\frac{1}{2}$ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

* This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 19, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 5th February, 1881, and is hereby promulgated for general information:—

ACT No. VIII OF 1881.

THE PETROLEUM ACT, 1881.

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PREAMBLE.

Preliminary.

SECTIONS.

1. Short title.
   Commencement.
   Local extent.
2. Repeal of enactments.
3. Interpretation-clause.

Dangerous Petroleum.

4. Dangerous petroleum in quantities exceeding 40 gallons.
   Application for license to import, transport or possess such petroleum.
   Power to grant license.
5. Dangerous petroleum in quantities not exceeding 40 gallons.
6. Vessels containing dangerous petroleum to be marked.

Petroleum generally.

7. Power to make rules as to the importation of petroleum.
8. Possession and transport of petroleum.
9. Power to make rules as to such possession and transport.
10. Power to inspect and require dealer to sell samples.
11. Notice to be given when officer proposes to test samples.
12. Certificate as to result of such testing.

Penalties.

13. Penalty for illegal importation, &c., of petroleum.
14. Penalty for keeping, transporting, selling or exposing for sale petroleum in contravention of section 6.
15. Penalty for refusing to comply with section 10.
16. Confiscation of petroleum.
17. Jurisdiction.

Miscellaneous.

18. Rules when to have force of law.
19. Power to apply this Act to other fluids.

THE SCHEDULE.

An Act to regulate the importation, possession and transport of Petroleum and other fluids of a like nature.

Preamble.

WHEREAS it is expedient to regulate the importation, possession and transport of petroleum and other fluids of a like nature; It is hereby enacted as follows:—

Preliminary.

Short title.

1. This Act may be called "The Petroleum Act, 1881"; and it shall come into force on the first day of July, 1881.

Commencement.

Local extent.

The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct.

Repeal of enactments.

2. The Indian Ports Act, 1875, section thirty-seven, and Bengal Act No. III of 1865 (*to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of Inflammable Oils in Ports and places within the Provinces under the control of the Lieutenant-Governor of Bengal*) are hereby repealed.

Interpretation-clause.

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

"petroleum" includes also the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, kerosine, paraffine oil, mineral oil, petroline, gasoline, benzol, benzoline, benzine and any inflammable liquid that is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any products of petroleum,

"petroleum:"

but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer.

Explanation.—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus and in the manner described in the Schedule hereto annexed:

"dangerous petroleum" means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer:

"dangerous petroleum:"

"import" means to bring into British India by sea or land:

"import:"

and "importation" means the bringing into British India as aforesaid:

"transport" means to remove from one place to another within British India.

"transport:"

Dangerous Petroleum.

Dangerous petroleum in quantities exceeding 40 gallons.

4. No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported, or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

Application for license to import, transport or possess such petroleum.

Every application for such a license shall be in writing, and shall declare—

(*a*) the quantity of such petroleum which it is desired to import, transport or possess, as the case may be;

(*b*) the purpose for which the applicant believes that such petroleum will be used; and

(*c*) that petroleum other than dangerous petroleum cannot be used for such purpose.

Power to grant license.

If the Local Government sees reason to believe that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit.

Dangerous petroleum in quantities not exceeding 40 gallons.

5. No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license:

Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware or metal vessels, each of which contains not more than a pint and is securely stopped.

Vessels containing dangerous petroleum to be marked.

6. All dangerous petroleum—

(*a*) which is kept at any place after seven days from the date on which it is imported, or

(*b*) which is transported, or

(*c*) which is sold or exposed for sale,

shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof.

Petroleum generally.

Power to make rules as to the importation of petroleum.

7. The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum, and in particular—

(*a*) for ascertaining the quantity and description of any petroleum on board a ship;

(*b*) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof;

(*c*) to determine the ports at which only petroleum may be imported; and

(*d*) to regulate the time and mode of, and the precautions to be taken on, landing or transhipping any petroleum.

In this section—

"ship" includes anything made for the conveyance by water of human beings or property:

"ship:"

"master" includes every person (except a Pilot or Harbour Master) having for the time being the charge or control of a ship.

"master."

Possession and transport of petroleum.

8. No quantity of petroleum exceeding five hundred gallons shall be kept by any one person or on the same premises or shall be transported except under, and in accordance with the conditions of, a license granted under this Act.

Power to make rules as to such possession and transport.

9. The Local Government may, from time to time, make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

Such rules may provide for the following among other matters, that is to say—

in the case of licenses to possess petroleum—

(*a*) the nature and situation of the premises for which they may be granted, and

(*b*) the inspection of such premises and the testing of petroleum found thereon;

in the case of licenses to transport petroleum—

(*c*) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(*d*) the stoppage and inspection of it during transit;

in the case of both such licenses—

(*e*) the authority by which the license may be granted;

(*f*) the fee to be charged for it;

(*g*) the quantity of petroleum it is to cover;

(*h*) the conditions which may be inserted in it;

(*j*) the time during which it is to continue in force; and

(*k*) the renewal of the license.

Power to inspect and require dealer to sell samples.

10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples.

Notice to be given when officer proposes to test samples.

11. When any such officer has, in exercise of the powers conferred by section ten, or by purchase, obtained a sample of petroleum in the possession of a dealer, he may give a notice in writing to such dealer informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his agent may be present at such testing.

Certificate as to result of such testing.

12. On any such testing, if it appears to the officer or other person so testing that the petroleum from which such sample has been taken is or is not dangerous petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein; and a certified copy of such certificate shall be given gratis to the dealer at his request.

Penalties.

Penalty for illegal importation, &c., of petroleum.

13. Any person who, in contravention of this Act or of any rules made hereunder, imports, possesses or transports any petroleum, and any person who otherwise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Penalty for keeping, transporting, selling or exposing for sale petroleum in contravention of section 6.

14. Any person keeping, transporting, selling or exposing for sale petroleum in vessels not marked or labelled as prescribed by section six shall be punished with fine which may extend to fifty rupees.

Penalty for refusing to comply with section 10.

15. Any dealer in petroleum who refuses or neglects to show to any officer authorized under section ten any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

Confiscation of petroleum.

16. In any case in which an offence under section thirteen or section fourteen has been committed, the convicting Magistrate may direct that—

(*a*) the petroleum in respect of which the offence has been committed, or

(*b*) where the offender is importing or transporting or is in possession of any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing, or transporting, or is in possession of,

shall, together with the tins or other vessels in which it is contained, be confiscated.

Jurisdiction.

17. The criminal jurisdiction under this Act shall, in the towns of Calcutta, Madras and Bombay, be exercised by a Presidency Magistrate, and elsewhere by a Magistrate of the first class or (where specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class.

Miscellaneous.

Rules when to have force of law.

18. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law:

Provided that no such rule shall be so published without the previous sanction of the Governor General in Council.

Power to apply this Act to other fluids.

19. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by such notification fix, in substitution for the quantities of petroleum fixed by sections four, five and eight, the quantities of such fluid to which these sections shall apply.

The Governor General in Council may by a like notification cancel any notification issued under this section.

THE SCHEDULE.

Specification explanatory of the Test Apparatus.

The following is a description of the details of the apparatus:—

The oil-cup consists of a cylindrical vessel 2″ diameter, $2\frac{3}{10}$″ height (internal), with outward projecting rim $\frac{5}{10}$″ wide, $\frac{3}{8}$″ from the top and $1\frac{1}{8}$″ from the bottom of the cup. It is made of gun-metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{4}$″. The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.) which carries the thermometer and test-lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate: it is provided with a spout the mouth of which is $\frac{1}{4}$″ in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{4}$″ below the centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{6}{10}$″ by $\frac{4}{10}$″, and two smaller ones, $\frac{3}{10}$″ by $\frac{3}{10}$″, close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3″ diameter and $2\frac{1}{4}$″ height, and an outer one of $5\frac{1}{4}$″ diameter and $5\frac{3}{4}$″ height; they are soldered to a circular copper plate (20 B. W. G.) perforated in the centre, which forms the top of the

bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}''$, that is, its diameter is about $\frac{6}{8}''$ greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened, by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil-cup. The exact distance between the sides and bottom of the bath of the oil-lamp is $1\frac{1}{2}''$. A split socket similar to that on the cover of the oil-cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}''$. One of the three legs of the stand serves as support for the spirit-lamp, attached to it by means of a small swing bracket. The distance of the wick-holder from the bottom of the bath is $1''$.

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing-point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}''$ measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{4}''$.

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

Directions for applying the Test.

1. The test-apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water-bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test-lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape-oil up to the lower edge of the opening of the spout or wick-tube. The lamp is trimmed so that when lighted it gives a flame of about 0·15 of an inch diameter, and this size of flame, which is represented by the projecting white bead on the cover of the oil-cup, is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil-lamp, and for this purpose a test-flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and, if it exceeds 65°, the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test-lamp is then placed in position upon the lid of the cup, the lead line or pendulum,* which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66°, the operation of testing is to be commenced, the test-flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test-apparatus to determine the flashing-points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air-chamber which surrounds the cup is filled with cold water to a depth of $1\frac{1}{2}$ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

* This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 26, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 5th February, 1881, and is hereby promulgated for general information:—

ACT No. VIII OF 1881.

THE PETROLEUM ACT, 1881.

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THE SCHEDULE.

An Act to regulate the importation, possession and transport of Petroleum and other fluids of a like nature.

Preamble.

WHEREAS it is expedient to regulate the importation, possession and transport of petroleum and other fluids of a like nature; It is hereby enacted as follows:—

Preliminary.

Short title. Commencement.

1. This Act may be called "The Petroleum Act, 1881"; and it shall come into force on the first day of July, 1881.

Local extent.

The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct.

Repeal of enactments.

2. The Indian Ports Act, 1875, section thirty-seven, and Bengal Act No. III of 1865 (*to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of Inflammable Oils in Ports and places within the Provinces under the control of the Lieutenant-Governor of Bengal*) are hereby repealed.

Interpretation-clause.

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

"petroleum" includes also the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, kerosine, paraffine oil, mineral oil, petroline, gasoline, benzol, benzoline, benzine and any inflammable liquid that is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any products of petroleum,

"petroleum:"

but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer.

Explanation.—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus and in the manner described in the Schedule hereto annexed:

"dangerous petroleum" means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer:

"dangerous petroleum:"

"import" means to bring into British India by sea or land:

"import:"

and "importation" means the bringing into British India as aforesaid:

"transport" means to remove from one place to another within British India.

"transport:"

Dangerous Petroleum.

Dangerous petroleum in quantities exceeding 40 gallons.

4. No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported, or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

Application for license to import, transport or possess such petroleum.

Every application for such a license shall be in writing, and shall declare—

(*a*) the quantity of such petroleum which it is desired to import, transport or possess, as the case may be;

(*b*) the purpose for which the applicant believes that such petroleum will be used; and

(*c*) that petroleum other than dangerous petroleum cannot be used for such purpose.

Power to grant license.

If the Local Government sees reason to believe that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit.

Dangerous petroleum in quantities not exceeding 40 gallons.

5. No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license:

Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware or metal vessels, each of which contains not more than a pint and is securely stopped.

Vessels containing dangerous petroleum to be marked.

6. All dangerous petroleum—

(*a*) which is kept at any place after seven days from the date on which it is imported, or

(*b*) which is transported, or

(*c*) which is sold or exposed for sale,

shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof.

Petroleum generally.

Power to make rules as to the importation of petroleum.

7. The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum, and in particular—

(*a*) for ascertaining the quantity and description of any petroleum on board a ship;

(*b*) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof;

(*c*) to determine the ports at which only petroleum may be imported; and

(*d*) to regulate the time and mode of, and the precautions to be taken on, landing or transhipping any petroleum.

In this section—

"ship" includes anything made for the conveyance by water of human beings or property:

"ship:"

"master" includes every person (except a Pilot or Harbour Master) having for the time being the charge or control of a ship.

"master."

Possession and transport of petroleum.

8. No quantity of petroleum exceeding five hundred gallons shall be kept by any one person or on the same premises or shall be transported except under, and in accordance with the conditions of, a license granted under this Act.

Power to make rules as to such possession and transport.

9. The Local Government may, from time to time, make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

Such rules may provide for the following among other matters, that is to say—

in the case of licenses to possess petroleum—

(*a*) the nature and situation of the premises for which they may be granted, and

(*b*) the inspection of such premises and the testing of petroleum found thereon;

in the case of licenses to transport petroleum—

(*c*) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(*d*) the stoppage and inspection of it during transit;

in the case of both such licenses—

(*e*) the authority by which the license may be granted;

(*f*) the fee to be charged for it;

(*g*) the quantity of petroleum it is to cover;

(*h*) the conditions which may be inserted in it;

(*j*) the time during which it is to continue in force; and

(*k*) the renewal of the license.

Power to inspect and require dealer to sell samples.

10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples.

Notice to be given when officer proposes to test samples.

11. When any such officer has, in exercise of the powers conferred by section ten, or by purchase, obtained a sample of petroleum in the possession of a dealer, he may give a notice in writing to such dealer informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his agent may be present at such testing.

Certificate as to result of such testing.

12. On any such testing, if it appears to the officer or other person so testing that the petroleum from which such sample has been taken is or is not dangerous petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein; and a certified copy of such certificate shall be given gratis to the dealer at his request.

Penalties.

Penalty for illegal importation, &c., of petroleum.

13. Any person who, in contravention of this Act or of any rules made hereunder, imports, possesses or transports any petroleum, and any person who otherwise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Penalty for keeping, transporting, selling or exposing for sale petroleum in contravention of section 6.

14. Any person keeping, transporting, selling or exposing for sale petroleum in vessels not marked or labelled as prescribed by section six shall be punished with fine which may extend to fifty rupees.

Penalty for refusing to comply with section 10.

15. Any dealer in petroleum who refuses or neglects to show to any officer authorized under section ten any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

Confiscation of petroleum.

16. In any case in which an offence under section thirteen or section fourteen has been committed, the convicting Magistrate may direct that—

(*a*) the petroleum in respect of which the offence has been committed, or

(*b*) where the offender is importing or transporting or is in possession of any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing, or transporting, or is in possession of,

shall, together with the tins or other vessels in which it is contained, be confiscated.

Jurisdiction.

17. The criminal jurisdiction under this Act shall, in the towns of Calcutta, Madras and Bombay, be exercised by a Presidency Magistrate, and elsewhere by a Magistrate of the first class or (where specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class.

Miscellaneous.

Rules when to have force of law.

18. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law:

Provided that no such rule shall be so published without the previous sanction of the Governor General in Council.

Power to apply this Act to other fluids.

19. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by such notification fix, in substitution for the quantities of petroleum fixed by sections four, five and eight, the quantities of such fluid to which these sections shall apply.

The Governor General in Council may by a like notification cancel any notification issued under this section.

THE SCHEDULE.

Specification explanatory of the Test Apparatus.

The following is a description of the details of the apparatus:—

The oil-cup consists of a cylindrical vessel 2″ diameter, $2\frac{2}{10}$″ height (internal), with outward projecting rim $\frac{5}{10}$″ wide, $\frac{3}{8}$″ from the top and $1\frac{7}{8}$″ from the bottom of the cup. It is made of gun-metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{4}$″. The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.) which carries the thermometer and test-lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate; it is provided with a spout the mouth of which is $\frac{1}{16}$″ in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{2}$″ below the centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{5}{10}$″ by $\frac{4}{10}$″, and two smaller ones, $\frac{3}{10}$″ by $\frac{2}{10}$″, close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3″ diameter and $2\frac{1}{2}$″ height, and an outer one of $5\frac{1}{2}$″ diameter and $5\frac{3}{4}$″ height; they are soldered to a circular copper plate (20 B. W. G.) perforated in the centre, which forms the top of the

bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}''$, that is, its diameter is about $\frac{6}{8}''$ greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened, by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil-cup. The exact distance between the sides and bottom of the bath of the oil-lamp is $1\frac{1}{2}''$. A split socket similar to that on the cover of the oil-cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}''$. One of the three legs of the stand serves as support for the spirit-lamp, attached to it by means of a small swing bracket. The distance of the wick-holder from the bottom of the bath is $1''$.

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing-point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}''$ measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{2}''$.

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

Directions for applying the Test.

1. The test-apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water-bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test-lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape-oil up to the lower edge of the opening of the spout or wick-tube. The lamp is trimmed so that when lighted it gives a flame of about 0·15 of an inch diameter, and this size of flame, which is represented by the projecting white bead on the cover of the oil-cup, is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil-lamp, and for this purpose a test-flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and, if it exceeds 65°, the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test-lamp is then placed in position upon the lid of the cup, the lead line or pendulum,* which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66°, the operation of testing is to be commenced, the test-flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test-apparatus to determine the flashing-points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air-chamber which surrounds the cup is filled with cold water to a depth of $1\frac{1}{2}$ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

* This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information:—

ACT No. IX OF 1881.

An Act to amend the Administrator General's Act, 1874.

Preamble.

WHEREAS Hindús, Muhammadans and Buddhists are exempted from the operation of certain provisions of the Administrator General's Act, 1874, but are subject to the operation of certain other provisions of the said Act, and it is expedient that Pársís should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindús, Muhammadans and Buddhists; and whereas it is expedient to amend the said Act in other particulars hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Administrator General's Act, 1881":

Commencement.

and shall come into force at once.

Amendment of sections 16, 17, 18 and 64 of Administrator General's Act, 1874.

2. In sections 16, 17, 18 and 64, respectively, of the said Act, between the word "Muhammadan" and the words "or Buddhist," wherever they occur, the word "Pársí" shall be inserted.

New section inserted after section 23 of same.

3. After section twenty-three of the same Act, the following section shall be inserted:—

Effect of probate or letters granted to Administrator General.

"23A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such property to such Administrator General: Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

"Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same."

New section substituted for section 28 of same.

4. For section twenty-eight of the same Act, the following section shall be substituted:—

Distribution of assets.

"28. When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

"Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively."

Amendment of sections 36 and 37 of same.

5. In section thirty-six of the same Act, the words "not being a Hindú, Muhammadan or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act" shall be repealed; and in section thirty-seven of the same Act, after the words "effects of the deceased," the following shall be inserted, namely:—"and such deceased was not a Hindú, Muhammadan, Pársí or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act."

Amendment of section 38 of same.

6. In section thirty-eight of the same Act, for the words "such certificate" the words "certificate under section thirty-six or thirty-

seven" shall be substituted; and the words "which oath or affirmation the Administrator General is hereby authorized to administer or take" shall be repealed.

New section inserted after section 55 of same.

7. After section fifty-five of the same Act, the following section shall be inserted:—

Commission on assets collected beyond Presidency.

"55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate."

New section inserted before section 61 of same.

8. Before section sixty-one of the same Act, the following section shall be inserted:—

Power to examine on oath.

"60A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question."

Saving of letters and certificates already granted.

9. Nothing herein contained shall affect any probate, letters of administration or certificate granted or vested under the said Act before the passing of this Act.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information:—

ACT NO. X OF 1881.

An Act to amend the Coroners' Act, 1871, and for other purposes.

Preamble.

WHEREAS under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court;

and whereas it is expedient to empower the Local Government to alter the local limits of the said Coroner's jurisdiction;

and whereas it is also expedient to amend the said Act in other particulars hereinafter appearing;

and whereas it is also expedient to correct an error in section nine of Madras Act No. VIII of 1867 (*an Act to incorporate the Police of the Town of Madras with the general Police of the Madras Presidency, and for other purposes*) as amended by the Code of Criminal Procedure; It is hereby enacted as follows:—

Short title.
Commencement.

1. This Act may be called "The Coroners' Act, 1881," and shall come into force on the passing thereof.

Partial repeal of Act IV of 1871, section 1.

2. The second clause of the first section of the Coroners' Act, 1871, is hereby repealed.

Power to alter local limits of jurisdiction of Coroner of Madras.

3. The Governor of Fort St. George in Council may, from time to time, with the previous sanction of the Governor General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras:

Provided that such limits shall not extend beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

Sections 133 to 135 of Act X of 1872 to extend to area excluded from Coroner's jurisdiction.

4. When, in exercise of the power conferred by section three, any area within the local limits of the said ordinary original civil jurisdiction is excluded from the local limits of the Coroner's jurisdiction, sections one hundred and thirty-three to one hundred and thirty-five (both inclusive) of the Code of Criminal Procedure shall extend to such area while so excluded, and all functions assigned to a Magistrate by those sections shall be discharged by the Commissioner of Police.

Act IV of 1871, section 8, amended.

5. In section eight of the Coroners' Act, 1871, for the words "is informed," the words "has reason to believe" shall be substituted.

Section 17 of same Act amended.

6. For the first two clauses of section seventeen of the Coroners' Act, 1871, the following shall be substituted, that is to say:—

"It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses: the Coroner shall enquire of such circumstances and the cause of death, and, if before or during the enquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

"Any person disobeying such summons shall be deemed to have committed an offence under section one hundred and seventy-four, section one hundred and seventy-five or section one hundred and seventy-six of the Indian Penal Code, as the case may be."

Addition to section 20 of same Act.

7. To section twenty of the Coroners' Act, 1871, the following clause shall be added, that is to say:—

"For the purposes of section twenty-six of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate."

New section substituted for section 9 of Madras Act VIII of 1867.

8. For section nine of the said Madras Act No. VIII of 1867, the following section shall be substituted:—

Law to govern Town Police.

"9. The Town Police shall be governed by all the provisions of the Criminal Procedure Code contained in sections 89, 91 to 103 (both inclusive), 108, 109, 110, 111, 112, 114, 116, 117

(first part), 118, 119, 120, 123, 124, 125, 127, 128, 129, 131, 136, 139, 140, 141, 142, 144, 147, chapter XII, sections 159, 161, 163 to 170 (both inclusive), 174 to 185 (both inclusive), chapter XXVII (except section 385), sections 415 to 420 (both inclusive) and 480, so far as they are applicable:

"Provided always, that the officer in charge of a Police-station shall not be required to bind over the prosecutor and witnesses as directed in section 123 of the said Code, if their immediate attendance can be procured without recognizances."

9. The portion of schedule V of the Code of Criminal Procedure, under the heading "Acts of the Governor of Madras in Council," shall be read as if the letter and figure "s. 9" in the first column, and all the words and figures in the second and third columns, opposite the said letter and figure, were omitted.

Act X of 1872, schedule V, in part repealed.

D. FITZPATRICK,

Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information :—

ACT No. XI OF 1881.

An Act to give power to prohibit the levy of municipal taxes in certain cases.

Preamble.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Municipal Taxation Act, 1881."

Local extent.

It extends to the whole of British India :

Commencement.

and shall come into force at once.

"Municipal Committee" defined.

2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.

Power to prohibit levy of tax.

3. Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—

(*a*) payable by any person subject to the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, who is compelled by the exigencies of military duty to reside within the limits of a municipality; or

(*b*) payable by the Secretary of State for India in Council.

The Governor General in Council may, by a like order, rescind any such prohibition.

Secretary of State in Council to pay taxes referred to in section 3, clause (*a*).

4. So long as any order made under section three, prohibiting the levy of a tax on any person mentioned in clause (*a*) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person :

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs, to keep.

Payments to be made in lieu of taxes referred to in section 3, clause (*b*).

5. So long as any order made under section three, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

Decision of questions arising under this Act.

6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality, or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 5, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information:—

ACT NO. IX OF 1881.

An Act to amend the Administrator General's Act, 1874.

WHEREAS Hindús, Muhammadans and Buddhists are exempted from the operation of certain provisions of the Administrator General's Act, 1874, but are subject to the operation of certain other provisions of the said Act, and it is expedient that Pársís should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindús, Muhammadans and Buddhists; and whereas it is expedient to amend the said Act in other particulars hereinafter appearing; It is hereby enacted as follows:—

Preamble.

1. This Act may be called "The Administrator General's Act, 1881":

Short title.

and shall come into force at once.

Commencement.

2. In sections 16, 17, 18 and 64, respectively, of the said Act, between the word "Muhammadan" and the words "or Buddhist," wherever they occur, the word "Pársí" shall be inserted.

Amendment of sections 16, 17, 18 and 64 of Administrator General's Act, 1874.

3. After section twenty-three of the same Act, the following section shall be inserted:—

New section inserted after section 23 of same.

"23A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such property to such Administrator General: Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

Effect of probate or letters granted to Administrator General.

"Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same."

4. For section twenty-eight of the same Act, the following section shall be substituted:—

New section substituted for section 28 of same.

"28. When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

Distribution of assets.

"Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively."

5. In section thirty-six of the same Act, the words "not being a Hindú, Muhammadan or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act" shall be repealed; and in section thirty-seven of the same Act, after the words "effects of the deceased," the following shall be inserted, namely:—"and such deceased was not a Hindú, Muhammadan, Pársí or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act."

Amendment of sections 36 and 37 of same.

6. In section thirty-eight of the same Act, for the words "such certificate" the words "certificate under section thirty-six or thirty-

Amendment of section 38 of same.

seven" shall be substituted; and the words "which oath or affirmation the Administrator General is hereby authorized to administer or take" shall be repealed.

New section inserted after section 55 of same.

7. After section fifty-five of the same Act, the following section shall be inserted:—

Commission on assets collected beyond Presidency.

"55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate."

New section inserted before section 61 of same.

8. Before section sixty-one of the same Act, the following section shall be inserted:—

Power to examine on oath.

"60A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question."

Saving of letters and certificates already granted.

9. Nothing herein contained shall affect any probate, letters of administration or certificate granted or vested under the said Act before the passing of this Act.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information:—

ACT No. X OF 1881.

An Act to amend the Coroners' Act, 1871, and for other purposes.

Preamble.

WHEREAS under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court;

and whereas it is expedient to empower the Local Government to alter the local limits of the said Coroner's jurisdiction;

and whereas it is also expedient to amend the said Act in other particulars hereinafter appearing;

and whereas it is also expedient to correct an error in section nine of Madras Act No. VIII of 1867 (*an Act to incorporate the Police of the Town of Madras with the general Police of the Madras Presidency, and for other purposes*) as amended by the Code of Criminal Procedure; It is hereby enacted as follows:—

Short title.
Commencement.

1. This Act may be called "The Coroners' Act, 1881," and shall come into force on the passing thereof.

Partial repeal of Act IV of 1871, section 1.

2. The second clause of the first section of the Coroners' Act, 1871, is hereby repealed.

Power to alter local limits of jurisdiction of Coroner of Madras.

3. The Governor of Fort St. George in Council may, from time to time, with the previous sanction of the Governor General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras:

Provided that such limits shall not extend beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

Sections 133 to 135 of Act X of 1872 to extend to area excluded from Coroner's jurisdiction.

4. When, in exercise of the power conferred by section three, any area within the local limits of the said ordinary original civil jurisdiction is excluded from the local limits of the Coroner's jurisdiction, sections one hundred and thirty-three to one hundred and thirty-five (both inclusive) of the Code of Criminal Procedure shall extend to such area while so excluded, and all functions assigned to a Magistrate by those sections shall be discharged by the Commissioner of Police.

Act IV of 1871, section 8, amended.

5. In section eight of the Coroners' Act, 1871, for the words "is informed," the words "has reason to believe" shall be substituted.

Section 17 of same Act amended.

6. For the first two clauses of section seventeen of the Coroners' Act, 1871, the following shall be substituted, that is to say:—

"It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses: the Coroner shall enquire of such circumstances and the cause of death, and, if before or during the enquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

"Any person disobeying such summons shall be deemed to have committed an offence under section one hundred and seventy-four, section one hundred and seventy-five or section one hundred and seventy-six of the Indian Penal Code, as the case may be."

Addition to section 20 of same Act.

7. To section twenty of the Coroners' Act, 1871, the following clause shall be added, that is to say:—

"For the purposes of section twenty-six of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate."

New section substituted for section 9 of Madras Act VIII of 1867.

8. For section nine of the said Madras Act No. VIII of 1867, the following section shall be substituted:—

Law to govern Town Police.

"9. The Town Police shall be governed by all the provisions of the Criminal Procedure Code contained in sections 89, 91 to 103 (both inclusive), 108, 109, 110, 111, 112, 114, 116, 117

(first part), 118, 119, 120, 123, 124, 125, 127, 128, 129, 131, 136, 139, 140, 141, 142, 144, 147, chapter XII, sections 159, 161, 163 to 170 (both inclusive), 174 to 185 (both inclusive), chapter XXVII (except section 385), sections 415 to 420 (both inclusive) and 480, so far as they are applicable:

"Provided always, that the officer in charge of a Police-station shall not be required to bind over the prosecutor and witnesses as directed in section 123 of the said Code, if their immediate attendance can be procured without recognizances."

9. The portion of schedule V of the Code of Criminal Procedure, under the heading "Acts of the Governor of Madras in Council," shall be read as if the letter and figure "s. 9" in the first column, and all the words and figures in the second and third columns, opposite the said letter and figure, were omitted.

Act X of 1872, schedule V, in part repealed.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information:—

ACT No. XI OF 1881.

An Act to give power to prohibit the levy of municipal taxes in certain cases.

Preamble.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Municipal Taxation Act, 1881."

Local extent.

It extends to the whole of British India:

Commencement.

and shall come into force at once.

"Municipal Committee" defined.

2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.

Power to prohibit levy of tax.

3. Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—

(*a*) payable by any person subject to the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, who is compelled by the exigencies of military duty to reside within the limits of a municipality; or

(*b*) payable by the Secretary of State for India in Council.

The Governor General in Council may, by a like order, rescind any such prohibition.

Secretary of State in Council to pay taxes referred to in section 3, clause (*a*).

4. So long as any order made under section three, prohibiting the levy of a tax on any person mentioned in clause (*a*) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person:

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs, to keep.

Payments to be made in lieu of taxes referred to in section 3, clause (*b*).

5. So long as any order made under section three, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

Decision of questions arising under this Act.

6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality, or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 12, 1881.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information:—

ACT No. IX OF 1881.

An Act to amend the Administrator General's Act, 1874.

Preamble.

WHEREAS Hindús, Muhammadans and Buddhists are exempted from the operation of certain provisions of the Administrator General's Act, 1874, but are subject to the operation of certain other provisions of the said Act, and it is expedient that Pársís should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindús, Muhammadans and Buddhists; and whereas it is expedient to amend the said Act in other particulars hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Administrator General's Act, 1881":

Commencement.

and shall come into force at once.

Amendment of sections 16, 17, 18 and 64 of Administrator General's Act, 1874.

2. In sections 16, 17, 18 and 64, respectively, of the said Act, between the word "Muhammadan" and the words "or Buddhist," wherever they occur, the word "Pársí" shall be inserted.

New section inserted after section 23 of same.

3. After section twenty-three of the same Act, the following section shall be inserted:—

Effect of probate or letters granted to Administrator General.

"23A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such property to such Administrator General: Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

"Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same."

New section substituted for section 28 of same.

4. For section twenty-eight of the same Act, the following section shall be substituted:—

Distribution of assets.

"28. When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

"Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively."

Amendment of sections 36 and 37 of same.

5. In section thirty-six of the same Act, the words "not being a Hindú, Muhammadan or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act" shall be repealed; and in section thirty-seven of the same Act, after the words "effects of the deceased," the following shall be inserted, namely:—"and such deceased was not a Hindú, Muhammadan, Pársí or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act."

Amendment of section 38 of same.

6. In section thirty-eight of the same Act, for the words "such certificate" the words "certificate under section thirty-six or thirty-

seven" shall be substituted; and the words "which oath or affirmation the Administrator General is hereby authorized to administer or take" shall be repealed.

New section inserted after section 55 of same.

7. After section fifty-five of the same Act, the following section shall be inserted:—

Commission on assets collected beyond Presidency.

"55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate."

New section inserted before section 61 of same.

8. Before section sixty-one of the same Act, the following section shall be inserted:—

Power to examine on oath.

"60A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question."

Saving of letters and certificates already granted.

9. Nothing herein contained shall affect any probate, letters of administration or certificate granted or vested under the said Act before the passing of this Act.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information:—

ACT No. X OF 1881.

An Act to amend the Coroners' Act, 1871, and for other purposes.

Preamble.

WHEREAS under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court;

and whereas it is expedient to empower the Local Government to alter the local limits of the said Coroner's jurisdiction;

and whereas it is also expedient to amend the said Act in other particulars hereinafter appearing;

and whereas it is also expedient to correct an error in section nine of Madras Act No. VIII of 1867 (*an Act to incorporate the Police of the Town of Madras with the general Police of the Madras Presidency, and for other purposes*) as amended by the Code of Criminal Procedure; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Coroners' Act, 1881," and shall come into force on the passing thereof.

Partial repeal of Act IV of 1871, section 1.

2. The second clause of the first section of the Coroners' Act, 1871, is hereby repealed.

Power to alter local limits of jurisdiction of Coroner of Madras.

3. The Governor of Fort St. George in Council may, from time to time, with the previous sanction of the Governor General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras:

Provided that such limits shall not extend beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

Sections 133 to 135 of Act X of 1872 to extend to area excluded from Coroner's jurisdiction.

4. When, in exercise of the power conferred by section three, any area within the local limits of the said ordinary original civil jurisdiction is excluded from the local limits of the Coroner's jurisdiction, sections one hundred and thirty-three to one hundred and thirty-five (both inclusive) of the Code of Criminal Procedure shall extend to such area while so excluded, and all functions assigned to a Magistrate by those sections shall be discharged by the Commissioner of Police.

Act IV of 1871, section 8, amended.

5. In section eight of the Coroners' Act, 1871, for the words "is informed," the words "has reason to believe" shall be substituted.

Section 17 of same Act amended.

6. For the first two clauses of section seventeen of the Coroners' Act, 1871, the following shall be substituted, that is to say:—

"It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses: the Coroner shall enquire of such circumstances and the cause of death, and, if before or during the enquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

"Any person disobeying such summons shall be deemed to have committed an offence under section one hundred and seventy-four, section one hundred and seventy-five or section one hundred and seventy-six of the Indian Penal Code, as the case may be."

Addition to section 20 of same Act.

7. To section twenty of the Coroners' Act, 1871, the following clause shall be added, that is to say:—

"For the purposes of section twenty-six of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate."

New section substituted for section 9 of Madras Act VIII of 1867.

8. For section nine of the said Madras Act No. VIII of 1867, the following section shall be substituted:—

Law to govern Town Police.

"9. The Town Police shall be governed by all the provisions of the Criminal Procedure Code contained in sections 89, 91 to 103 (both inclusive), 108, 109, 110, 111, 112, 114, 116, 117

(first part), 118, 119, 120, 123, 124, 125, 127, 128, 129, 131, 136, 139, 140, 141, 142, 144, 147, chapter XII, sections 159, 161, 163 to 170 (both inclusive), 174 to 185 (both inclusive), chapter XXVII (except section 385), sections 415 to 420 (both inclusive) and 480, so far as they are applicable:

"Provided always, that the officer in charge of a Police-station shall not be required to bind over the prosecutor and witnesses as directed in section 123 of the said Code, if their immediate attendance can be procured without recognizances."

Act X of 1872, schedule V, in part repealed.

9. The portion of schedule V of the Code of Criminal Procedure, under the heading "Acts of the Governor of Madras in Council," shall be read as if the letter and figure "s. 9" in the first column, and all the words and figures in the second and third columns, opposite the said letter and figure, were omitted.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information:—

ACT No. XI OF 1881.

An Act to give power to prohibit the levy of municipal taxes in certain cases.

Preamble.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Municipal Taxation Act, 1881."

Local extent.

It extends to the whole of British India:

Commencement.

and shall come into force at once.

"Municipal Committee" defined.

2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.

Power to prohibit levy of tax.

3. Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—

(*a*) payable by any person subject to the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, who is compelled by the exigencies of military duty to reside within the limits of a municipality; or

(*b*) payable by the Secretary of State for India in Council.

The Governor General in Council may, by a like order, rescind any such prohibition.

Secretary of State in Council to pay taxes referred to in section 3, clause (*a*).

4. So long as any order made under section three, prohibiting the levy of a tax on any person mentioned in clause (*a*) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person:

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs, to keep.

Payments to be made in lieu of taxes referred to in section 3, clause (*b*).

5. So long as any order made under section three, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

Decision of questions arising under this Act.

6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality, or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 11th March 1881, and is hereby promulgated for general information:—

ACT NO. XII OF 1881.

THE NORTH-WESTERN PROVINCES RENT ACT, 1881.

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192. Appeal from Assistant Collector of second class.

(2)—*Assistant Collectors of the First Class.*

193. Appeal from orders of Assistant Collectors of first class on certain applications.
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SECTIONS.
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FIRST SCHEDULE.—FORMS.

SECOND SCHEDULE.—TERRITORIES EXEMPTED, IN THE FIRST INSTANCE, FROM THE OPERATION OF THE ACT.

A Bill to amend the Law relating to the recovery of Rent in the North-Western Provinces.

Preamble.

WHEREAS it is expedient to amend the law relating to the recovery of Rent in the North-Western Provinces of the Presidency of Fort William in [illegible]; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The North-Western Provinces Rent Act, 1881:"

Local extent.

It extends in the first instance to the territories for the time being under the government of the Lieutenant-Governor of the North-Western Provinces, except those specified in the second schedule hereto annexed. But the Local Government may, by notification in the official Gazette, extend the whole or any part of this Act to all or any of the territories so excepted, and when any part of the North-Western Provinces Rent Act, 1873, has been extended to any such territory, such part shall be repealed therein and the corresponding part of this Act shall extend thereto.

Save as provided by sections 171 and 172, nothing herein contained applies to land for the the time being occupied by dwelling-houses or manufactories, or appurtenant thereto, so long as such land is not let to agricultural tenants.

Commencement.

This Act shall come into force on the first day of April, 1881.

Act No. XVIII of 1873 repealed.

2. The North-Western Provinces Rent Act, 1873, is hereby repealed. But such repeal shall not legalize any practice which, immediately before the passing of that Act, was unlawful.

Rules, &c., under repealed Act.

All rules and appointments made, notifications and proclamations issued, authorities and powers conferred, leases granted, rents fixed, rights acquired, liabilities incurred and places appointed under that Act shall, so far as may be, be deemed to have been made, issued, conferred, granted, fixed, acquired, incurred and appointed hereunder.

Acts amended.

Illustration (*a*) to the Indian Penal Code, section 19, and Act No. [illegible] 1865, section 52, shall be read as if, for "Act X of 1859," the words "the North-Western Provinces Rent Act, 1873," were substituted. And after the said North-Western Provinces Rent Act, 1873, all references to that Act shall be construed as made to this Act.

Interpretation-clause.

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

'Mahál:'

(1.) 'Mahál' means—

(*a*) any local area held under a separate engagement for the payment of land-revenue, and for which a separate record-of-rights has been framed;

(*b*) any local area of which the revenue has been assigned or redeemed, and for which a separate record-of-rights has been framed:

'Tenant:'

(1A.) 'Tenant' includes a thékadár and a katkanadár:

'Rent:'

(2.) 'Rent' means whatever is to be paid, delivered or rendered by a tenant on account of his holding, use or occupation of land:

'Landholder:'

(3.) 'Landholder' means the person to whom a tenant is liable for rent:

'Sír-land:' (4.) 'Sír-land' means—

(*a*) land recorded as sír at the last settlement or revision of settlement of the district in which it is situate, and continuously so recorded since;

(*b*) land continuously cultivated for twelve years by the proprietor himself with his own stock or by his servants, or by hired labour;

(*c*) land recognized by village-custom as the special holding of a co-sharer, or treated as such in the distribution of profits or charges among the co-sharers:

'Collector of a District:' (5.) 'Collector of a District' means the chief officer in charge of the Revenue Administration of a District:

'Commissioner of a Division:' (6.) 'Commissioner of a Division' means the chief officer in charge of the Revenue Administration of a Division:

'Board:' (7.) 'Board' means the Board of Revenue for the North-Western Provinces:

'Civil Jail:' (8.) 'Civil Jail' means the civil jail of the District, and includes any place appointed by the Local Government for the confinement of prisoners under sentence of any Court constituted under this Act.

CHAPTER II.

RIGHTS AND LIABILITIES OF LANDHOLDERS AND TENANTS.

Intermediate holders of land at rates unchanged since permanent-settlement. **4.** When any permanent and transferable interest in land in a district or a portion of a district which has been permanently settled has been held otherwise than under a terminable lease by any person intermediate between the proprietor of the mahál and the occupants, and by the predecessors in interest of such person, from the time of the permanent-settlement, at the same rate of rent, such person shall have a right to hold such interest at that rate.

Tenants at fixed rates. **5.** When any land in a district or portion of a district which is permanently settled has been held by a tenant and his predecessors in interest, from the time of the permanent settlement, at the same rate of rent, such tenant shall have a right of occupancy at that rate.

A tenant having such right is hereinafter called a "tenant at a fixed rate."

Presumption when 20 years' holding at fixed rate is proved. **6.** When, in any suit to which the provisions of section 4 or section 5 apply, it is proved that the land has for a period of twenty years next before the institution of the suit been held by the present holder and his predecessors in interest at the same rate of rent, it shall be presumed, until the contrary is proved, that it has been held at such rate from the time of the permanent settlement.

Ex-proprietary tenants. **7.** Every person who may hereafter lose or part with his proprietary rights in any mahál shall have a right of occupancy in the land held by him as sír in such mahál at the date of such loss or parting, at a rent which shall be four annas in the rupee less than the prevailing rate payable by tenants-at-will for land of similar quality and with similar advantages.

Persons having such rights of occupancy shall be called "ex-proprietary tenants," and shall have all the rights of occupancy-tenants.

If there are two or more sharers in any sír-land and one of them becomes an ex-proprietary tenant, the share which previously belonged to such ex-proprietary tenant shall, on his application or on the application of the person entitled to receive the rent, be divided off by the Collector, and the rights of the ex-proprietary tenant shall be limited to the land comprised in such share.

Occupancy-tenants. **8.** Every tenant who has actually occupied or cultivated land continuously for twelve years has a right of occupancy in the land so occupied or cultivated by him.

Such tenants shall be called "occupancy-tenants."

The occupation or cultivating of the father or other person from whom the tenant inherits, shall be deemed to be the occupation or cultivating of the tenant within the meaning of this section:

Tenants barred from right of occupancy. Provided that no tenant shall acquire, under this section, a right of occupancy—

(*a*) in land which he holds from an occupancy-tenant, or from an ex-proprietary tenant, or from a tenant at fixed rates;

(*b*) in sír-land;

(*c*) in land held by him in lieu of wages.

Time excluded from reckoning period necessary for acquiring right of occupancy. Provided also that, when a tenant actually occupies or cultivates land under a written lease, without having a right of occupancy in such land, the period of twelve years necessary for acquiring a right of occupancy therein by him or any one claiming under him shall begin on the expiration of the term of such lease. If during the currency of such lease he ceases to occupy the land comprised therein, and sublets it to another, no right of occupancy in such land shall be acquired by the sub-lessee during the currency of the lease.

Rights under sections 7 and 8 when transferable. **9.** The right of tenants at fixed rates may devolve by succession or be transferred.

No other right of occupancy shall be transferable in execution of a decree or otherwise than by voluntary transfer between persons in favour of whom as co-sharers such right originally arose or who have become by succession co-sharers therein.

When any person entitled to such last-mentioned right dies, the right shall devolve as if it were land: Provided that no collateral relative of the deceased who did not then share in the cultivation of his holding shall be entitled to inherit under this clause.

Determination of class of tenure of tenant. **10.** On the application of any tenant to have his class of tenure determined, the Collector of the District or Assistant Collector shall determine the class to which he belongs, namely—

whether he is a tenant at fixed rates,

or an ex-proprietary tenant,

or an occupancy-tenant,

or whether he is a tenant without a right of occupancy.

Bar to enhancement of rent of tenants at fixed rates. **11.** The rent paid by tenants at fixed rates shall not be liable to enhancement, except as provided by section 18.

Enhancement in case of ex-proprietary and occupancy-tenants. **12.** The rent paid by ex-proprietary or occupancy-tenants shall not be liable to enhancement except—

(*a*) by a written agreement registered under the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or recorded before the kánúngo: or

(*b*) by order of a Settlement-officer passed under the law for the time being in force: or

(*c*) by order under this Act.

Grounds of enhancing rent of occupancy-tenants which has not been fixed by order. **13.** (*a*) Where the rent of any occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

(*b*) or where the rent has been fixed by any such order, but the term for which it has been fixed has expired,

(*c*) or where ten years from the date on which an order fixing the rent has taken effect have expired,

(*d*) or where by order of the Local Government the assessment of the district has been revised before confirmation,

(*e*) or where the period of settlement of the district has come to an end,

the landholder may apply to enhance the rent of such tenant on one of the following grounds and on no others:—

(*f*) that the rate of the rent paid by such tenant is below the prevailing rate payable by the same class of tenants for land of similar quality with similar advantages;

(*g*) that the value of the produce has, or the productive powers of the land have, been increased otherwise than by the agency or at the expense of the tenant;

(*h*) that the quantity of land held by the tenant has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

Enhancement of rent of ex-proprietary tenants who have not been fixed by order. (*a*.) Where the rent of any ex-proprietary tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1878, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*) has occurred,

the landholder may apply to enhance or determine the rent of such tenant as if he were an occupancy-tenant: Provided that his rent shall be four annas in the rupee below the prevailing rate for land of a similar quality with similar advantages held by tenants-at-will.

Selection of land for comparison. (*b*.) Whenever the district or tahsíl, or other local area in which such land is situated, has been divided by the Settlement-officer into circles of like capacity and soil, the land of similar quality, with similar advantages, shall, for the purposes of this section and section 13, be selected from the same circle.

(*c*.) When the Settlement-officer has not so divided the district or other local area as aforesaid, the land regarding which the application has been made shall be compared with land of similar quality and with similar advantages, in the same tahsíl or in a tahsíl immediately adjacent.

Abatement in like cases. **15.** Where the rent of any ex-proprietary tenant or occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*) has occurred,

the tenant may apply for an abatement of his rent on one of the following grounds, and on no others:—

(*a*) that the area of the land held by him has been diminished by diluvion or otherwise;

(*b*) that the value of the produce has, or the productive powers of such land have, been diminished by any cause beyond his power.

Time of enhancement or abatement where rent of ex-proprietary or occupancy-tenant has been fixed by order under this Act. **16.** Where the rent of any ex-proprietary or occupancy-tenant has been fixed by an order under this Act, such rent shall not be liable to be enhanced or abated until the occurrence of any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*), whichever first occurs.

Grounds of enhancement and abatement where his rent has been fixed by order of a Settlement-officer or under this Act. **17.** Notwithstanding anything contained in section 16 where the rent of any ex-proprietary or occupancy-tenant has been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act, the landholder may apply to enhance the rent of such tenant during the currency of the term for which the rent has been so fixed, on one of the following grounds, and on no others:—

(*a*) that the area of the tenants holding has been increased by alluvion or otherwise;

(*b*) that the productive powers of the land held by the tenant have, since the date of the order, been increased otherwise than by the agency or at the expense of the tenant:

And the tenant may apply for abatement of his rent on one of the following grounds, and on no others:—

(*c*) that the area of the land held by him has been diminished by diluvion or otherwise;

(*d*) that the productive powers of such land have been decreased by any cause beyond his control.

18. In the case of a tenant at fixed rates, the landholder may apply to enhance his rent on the ground that the area of the land in his holding has been increased by alluvion or otherwise,

Grounds of enhancement or abatement of rent of tenant at fixed rates.

and the tenant may apply for abatement of his rent on the ground that the area of the land in his holding has been diminished by diluvion or otherwise.

19. Applications for enhancement or abatement of rent must be made on or before the thirty-first day of August next before the year commencing on the first day of July from which the rent is to be enhanced or abated,

Day before which applications for enhancement or abatement must be made.

and every order for enhancement or abatement shall take effect from the first day of July next following the date of such order, unless for some reason, to be stated in writing, the Court thinks fit to order otherwise.

Orders when to take effect.

20. In determining, under this Chapter, the rate of rent payable by any tenant, his caste shall not be taken into consideration, unless it is proved that, by local custom, caste is taken into account in determining such rate;

Consideration of caste and class of tenant in determining rate of his rent.

and whenever it is found that, by local custom or practice, any class of persons, by reason of their having formerly been proprietors of the soil or otherwise, hold land at favourable rates of rent, the rate shall be determined in accordance with such custom or practice.

21. No tenant-at-will of land shall be liable to pay rent in excess of the rent (if any) payable by him in the previous year ending on the thirtieth day of June, unless the landholder and tenant have agreed as to the rent to be paid to the former by the latter, and such agreement has been recorded by the kánúngo of the pargana in which such land is situate.

Tenants-at-will.

22. Notwithstanding anything hereinbefore contained, when the rent of any ex-proprietary or occupancy-tenant has been fixed by agreement between the parties, such rent shall not be liable to enhancement or abatement for such term as may be agreed on.

Rent of ex-proprietary or occupancy-tenant fixed by agreement.

22A. When any land is held of a landholder by a tenant, such landholder or tenant may, in the absence of a written contract to the contrary, apply to the Collector of the District to have such land surveyed. The Collector, on receiving such application, may estimate the cost of such survey, and, by order in writing, require the applicant to deposit the amount of such estimate.

Applications to survey land.

If the applicant deposits such amount within fifteen days from the date of the order, the Collector of the District shall issue a notice to the other party or parties to the tenancy to show cause, at a time and place specified in such notice, why the survey should not be made; and, if no such cause is so shewn, may, by an order in writing, direct the survey to be made by such person, and at such time as he thinks fit.

A copy of such order shall be served on all the parties to the tenancy; and, if any party fails to attend at the appointed time, it shall not thereafter be open to him to question the correctness of the survey made in his absence.

If any party, on being called upon to show cause as aforesaid, makes any objection to the survey and such objection is overruled, he shall be liable to pay the costs (if any) occasioned by such objection.

Nothing in this section shall affect any power conferred by law to compel the attendance of any person at a survey.

23. Whenever for any cause the Local Government remits or suspends for any period the payment of the whole or any part of the revenue payable in respect of any land, any officer empowered by the Local Government in this behalf may, subject to such rules as to appeal, confirmation or otherwise as may, from time to time, be prescribed by the Board, order that the rent of such land shall be remitted, or suspended for the period of such suspension of payment of revenue, as the case may be, to an amount which shall be equal to double the amount of the revenue of which the payment has been so remitted or suspended, or shall bear the same proportion to the whole of the rent payable in respect of the land as the revenue of which the payment has been so remitted or suspended bears to the whole of the revenue payable in respect of such land;

Power to remit or suspend payment of rent when payment of revenue remitted or suspended.

and, subject to the same rules, the landholder shall be bound by such order.

(*A*).—*Leases.*

24. Every tenant is entitled to receive from the landholder, and may at any time during the continuance of his holding, apply for a lease containing the following particulars:—

Contents of lease to which every tenant is entitled.

(*a*) the quantity of land held by him, and, where the fields have been numbered in a Government survey, the number of each field:

(*b*) the amount of annual rent payable for such land:

(*c*) the instalments in which, and the dates on which, such rent is to be paid:

(*d*) any special conditions of the lease:

(*e*) if the rent is payable in kind, or is calculated on a valuation of the produce, the proportion of produce to be delivered, the mode of valuation, and the time, manner and place of delivery.

25. Tenants at fixed rates are entitled to receive leases at such rates.

Leases to which tenants at fixed rates are entitled.

26. Ex-proprietary and occupancy-tenants are entitled to receive leases at the rates determined in accordance with the law for the time being in force, or, where no rates have been so determined, at the rates actually paid by them when they demand such leases.

Leases to which ex-proprietary and occupancy-tenants are entitled.

27. All other tenants are entitled to leases only on such terms as may be agreed upon between them and the landholders.

Leases to which other tenants are entitled.

28. Every landholder who grants a lease is entitled to receive a reciprocal engagement from the tenant, executed by the tenant, and conformable with the terms of the lease.

Landholder granting lease entitled to reciprocal engagement.

The tender to any tenant of a lease, such as he is entitled to receive, shall entitle the landholder to receive a reciprocal engagement from such tenant.

29. Notwithstanding anything contained in section 22, when any lease is granted, or any agreement is entered into, by any landholder under engagement with Government for his land, fixing the rent of land for any period exceeding the term of such engagement, and such term expires, such lease or agreement shall,

Lease for period exceeding term of landholder's engagement.

(*a*) when, on the expiration of such term, the revenue payable in respect of such land is enhanced—be voidable at the option of the landlord, unless the tenant agrees to pay such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the landlord, determine to be fair and reasonable; and

(*b*) when such land-revenue is on the expiration of such term reduced—be voidable at the option of the tenant, unless the landlord agrees to accept such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the tenant, determine to be fair and reasonable.

30. (*a*) And whereas all grants (whether in writing or otherwise) for holding land exempt from the payment of rent which have been made since the first day of December, 1790, by any authority other than that of the Governor General in Council, were declared by Bengal Regulation XIX of 1793, section 10, to be null and void, and like provisions have been by divers Regulations applied to the several parts of the territories to which this Act extends, and the said Regulation XIX of 1793 also provided that no length of possession should be considered to give validity to any such grant, either with regard to the property in the land or the rents of it, it is hereby further enacted as follows:—

Resumption of rent-free grants.

(*b*) Applications by the proprietor to resume such grants or to assess rent on the land, shall be made to the Collector of the District or Assistant Collector, and, subject to rules to be made by the Local Government, shall be dealt with as other applications under this Act.

Applications to resume.

(*c*) Grants of land held under a written instrument, by which the grantor expressly agrees that the grant shall not be resumed, shall be held valid as against him (but not as against his representatives after his death) during the continuance of the settlement of the district in which the land is situate, which is current at the date of the grant.

Validity of grants which grantor has expressly agreed not to resume.

(*d*) Where any land, having been for the fifty years next before the twenty-second day of December, 1873, held rent-free and by at least two successors to the original grantee, was so held on that day, such holding shall be deemed to have conferred on the holder a proprietary right.

When rent-free tenure confers proprietary right.

(*e*) Nothing in the Indian Limitation Act, 1877, shall bar the right to make an application under this Act to assess to rent land held rent-free.

(*f*) Nothing in this section shall apply to either of the following cases:—

(1) Where land was, previously to the passing of the North-Western Provinces Rent Act, 1873, held rent-free under a judicial decision:

(2) Where, previously to the passing of that Act, land held rent-free had been purchased for a valuable consideration and resumption thereof had been barred under Act No. X of 1859, section 28, or under the Indian Limitation Act, 1871, schedule II, No. 130.

(*B*).—*Relinquishment and Ejectment.*

31. Every tenant not holding under a lease shall continue liable for the rent of the land in his holding for the ensuing year, unless on or before the first day of May in any year he gives notice in writing to the landholder, or his recognized agent, of his desire to relinquish such land on the thirtieth day of June next ensuing, and relinquishes it accordingly; or unless it is let to any other person by such landholder or agent;

Relinquishment of land by tenant not holding under a lease.

Proviso.

Provided that, whenever an order for the enhancement of the rent of any land held by any such tenant is passed and the tenant within fifteen days of the date of such order gives to the landholder or his recognized agent notice in writing of his desire to relinquish such land at the commencement of the period in respect of which such enhancement takes effect, and relinquishes such land accordingly, he shall not be liable for the rent payable for such land in respect of any period subsequent to such relinquishment.

Explanation.—No notice can be given under this section in respect of a portion only of any land held under the same lease or engagement.

32. If the landholder or his agent refuses to receive any notice under section 31, or if he receives it but refuses to sign and deliver a receipt for the same, the tenant may, before the expiration of the period limited for giving such notice, make an application to the tahsíldár, who shall thereupon cause the notice to be served on such landholder or agent, the tenant paying the costs of service.

Service through tahsíldár of notice of relinquishment.

33. The notice shall, if practicable, be served personally on the landholder or his agent; but if the landholder or his agent cannot be found, or if he evades service of the notice, 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

Mode of serving notice.

land is situate, at the *chaupál*, or other conspicuous place in the village where the land is situate.

Where the delay in serving the notice is owing to the fault of the landholder or his agent, the notice shall be deemed to have been served at the first attempt to serve it.

Application by landholder to set aside notice.

33A. When any such notice has been received by or served on a landholder or his agent he may, within fifteen days from such receipt or service, apply to the Collector or Assistant Collector to have such notice declared invalid, and the Collector shall thereupon determine the question between the parties.

If the landholder or his agent does not so apply within such period of fifteen days, he shall be deemed to have accepted the notice.

Liability of tenant to pay interest on arrear and to be ejected.

34. (*a*). When an arrear of rent remains due from any tenant, he shall be liable to pay interest on such arrear at one per cent. per mensem; and if the arrear remains due on the thirtieth day of June, to be ejected from the land in respect of which the arrear is due.

Bar to ejectment without decree.

(*b*). No tenant shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

Ejectment not to be decreed for certain acts or omissions.

(*c*). No ejectment of a tenant or forfeiture of a lease shall be decreed on account of any act or omission of the tenant—

(1) which is not detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let, or

(2) which by law, custom, or special agreement does not involve the forfeiture of the lease.

Explanation.—In clauses (*a*) and (*b*) the word 'tenant' does not include a thékadár and a katkanadár.

Ejectment of tenant at fixed rates, ex-proprietary, with right of occupancy, or holding under unexpired lease.

35. If the landholder desires to eject a tenant at fixed rates, an ex-proprietary tenant, an occupancy-tenant or a tenant holding under an unexpired lease, against whom a decree for arrears has been passed and remains unsatisfied, he may, after the expiration of the year, ending on the thirtieth day of June, in which such arrears accrued, apply to the Collector of the District or Assistant Collector to eject the tenant.

Such officer shall, on receiving such application cause a notice to be served on the tenant, stating the amount due under the decree, and informing him that if he does not pay such amount into Court within fifteen days from receipt of the notice, he will be ejected from his land.

If such amount be not so paid, the Collector of the District or Assistant Collector may eject the tenant.

Service of notice on tenant for limited period.

36. If the landholder desires to eject a tenant not having a right of occupancy, or any other tenant holding only for a limited period, after the determination of his tenancy, he shall cause a written notice of ejectment to be served on such tenant under the provisions of this Act.

Language and contents of notice.

37. The notice of ejectment shall be written in the vernacular language and character of the district:

it shall specify the land from which the tenant is to be ejected;

and it shall inform him that he must vacate such land; or that, if he means to contest the right to eject him, he must apply to the Collector of the District or Assistant Collector for that purpose.

Mode of serving notice.

38. The notice shall be issued and served through the office of the tahsíldár on application made to him between the first day of January and the first day of April in each year, and the landholder shall pay the cost of service: it shall be served personally on the tenant, if practicable; but if he cannot be found, service may be made by affixing the notice to his usual place of residence.

Effect of failure of tenant to institute suit to contest liability to ejectment.

39. (*a*). The tenant, on whom such notice has been served, may, within thirty days next after the service, make an application to the Collector of the District or Assistant Collector, contesting his liability to be ejected.

(*b*). When such an application is made, the Collector of the District or Assistant Collector shall proceed to determine the question between the parties.

(*c*). On the determination of such question adversely to the tenant, or, where no application under this section has been made within the said period of thirty days, on the expiration of such period, the tenancy of the land in respect of which the notice has been served shall cease;

Provided that when such question has been determined or such period has expired, as the case may be, before the first day of May next following the making of the application under section 38, the tenancy shall continue until and cease upon that day:

Provided also that the tenancy shall not cease under this section when after the service of the notice, the landholder authorises the tenant to continue in the occupation of the land.

Procedure to enforce ejectment.

40. If the landholder require assistance to eject the person whose tenancy is alleged to have ceased under the provisions of section 39, he may within fifteen days from the date of such cessation, apply to the Collector of the District or Assistant Collector for such assistance, and the Collector of the District or Assistant Collector shall order the ejectment of such tenant if he is satisfied—

(*a*) that the notice was duly served on such tenant under section 38;

(*b*) that he has not been authorized by the landholder to continue in occupation;

(*c*) that the tenant has not made the application mentioned in section 39, clause (*a*); or

(*d*) that if such application has been made, the question has been determined adversely to the tenant:

Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received if the lease be of the kind in which an advance has been made by the lessor-

holder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance either in money or by the usufruct of the land. In all such cases the landholder must proceed by suit in the Civil Court.

Notice of ejectment when void.

41. If the landholder expressly authorise the tenant, on whom the notice of ejectment has been served, or against whom any proceedings in ejectment under section 40 have been taken, to remain in occupation of the land, and to prepare it for the harvest, the proceedings shall become void.

Rights of ejected tenant.

42. (*a*). Any tenant ejected in accordance with the provisions of this Act, shall be entitled to any growing crops or other ungathered products of the earth belonging to the tenant, and growing on the land at the time of his ejectment, and to use the land for the purpose of tending and gathering in such crops or other products, paying adequate rent therefor:

Effect of tender by landholder of payment for crops.

(*b*). Provided that, if the landholder desire to purchase such crops or other products, he may tender their price to the tenant; and thereupon the right of the tenant to such crops and other products, and to use the land for the purpose aforesaid, shall cease.

Power to determine rent and price.

(*c*). In the case of a dispute under this section, the Collector of the District or Assistant Collector may, on the application of the landholder or tenant, award the rent and price so payable; and the amount of such award, or of any tender accepted under this section, shall be recoverable as an arrear of rent by suit under this Act.

Set-off of rent.

(*d*). The rent, if any, payable to the landholder by the tenant at the time of his ejectment may be set-off against the price of the said crops or other products.

Application for officer to divide produce or appraise crop.

(*e*). Wherever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other procedure of a like nature, requiring the presence both of the cultivator and landholder, either personally or by agent,

if either landholder or tenant, personally or by agent, neglect to attend at the proper time, or if there is a dispute as to the amount or value of the crop,

an application may be presented by either party to the Collector of the District or Assistant Collector requesting that a proper officer be deputed to make the division, estimate or appraisement.

On receiving such application, the Collector of the District or Assistant Collector shall issue a written intimation to the opposite party or his agent, to attend on the date and at the time specified in the same, and shall depute an officer before whom the division, estimate or appraisement shall be made.

If on or before the date appointed, the dispute has not been amicably adjusted, three men of the village or neighbourhood shall be chosen, one by each of the parties and one by the officer deputed to divide the grain or appraise the crops, and the officer deputed shall decide the amount of rent payable by their award, and shall give to the party applying a written authority to divide the grain or cut the crops:

(*d*). Provided that, if either party fail to attend, the officer deputed shall nominate an assessor on his behalf.

(*e*). The officer deputed shall report his proceedings to the Collector of the District or Assistant Collector, who shall determine the amount of costs properly incurred under this section, and the share of the costs to be paid by either party.

(C).—*Compensation for Improvements made by Tenants.*

Tenants' right to compensation for improvements.

44. If any tenant, or any person from whom he has inherited or purchased, make any such improvements on the land in his possession as are hereinafter mentioned, neither he nor his representative shall be ejected from the same land without payment of compensation for such improvements.

Explanation.—In this section the word "tenant" does not include a thékadár or a katkanadár and the word "improvements" 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—

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

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

(*c*) the reclaiming, clearing, or enclosing of lands for agricultural purposes,

(*d*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto.

Notwithstanding anything hereinbefore contained, no tenant, other than a tenant at fixed rates or an occupancy-tenant, shall be entitled to any compensation in respect of any improvement effected without the consent of the landholder after the passing of this Act.

Mode of making compensation.

45. Such compensation may, at the option of the landholder or his representative, be made—

1*st*,—by payment in money;

2*nd*,—by a rent to be charged on the land;

3*rd*,—by the grant of a beneficial lease of the land, by the landholder or his representative, to the tenant or his representative;

4*th*,—partly by one or by any two of the said ways, and partly by the other or other of the same ways.

Settlement of difference as to amount or value of compensation.

46. In case of difference as to the amount or value of the compensation tendered, either party may apply to the Collector of the District or Assistant Collector stating the matter in dispute, and requesting a determination thereof.

On receiving such application, the Collector of the District or Assistant Collector shall—

(*a*) cause notice thereof to be served on the other party,

(*b*) take such evidence as the parties or either of them may adduce,

(*c*) make such further inquiry as the Collector of the District or Assistant Collector may deem necessary, and

(*d*) determine the amount of the payment in money, and the amount and incidence of the rent-charge, and the terms of the lease, or any of such matters.

Considerations in determining compensation.

47. In determining the amount or value mentioned in section 46, or the terms of such lease, the Collector of the District or Assistant Collector shall take into account any assistance given to the tenant by the landholder either directly in money, material or labour, for the purpose of making such improvements, or indirectly by allowing the tenant to hold at a favourable rate of rent.

(D).—Compensation for wrongful acts and omissions.

Right of tenant to compensation for exactions in excess of rent or for withholding receipt.

48. Every tenant from whom any sum is exacted in excess of the rent specified in his lease or payable under the provisions of this Act,

and every tenant from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the landholder compensation not exceeding double the amount so exacted or paid

Contents of receipt.

Receipts for rent shall specify the period or crop on account of which the rent is acknowledged to have been paid;

and any refusal to make such specification shall be held to be a withholding of a receipt.

Explanation.—In this section the word "tenant" does not include a thékadár or a katkanadár.

Damages for extorting payment of rent by duress.

49. If payment of rent, whether the same be legally due or not, is extorted from any tenant by illegal confinement or other duress, he shall be entitled to recover from the person guilty of such extortion such further compensation, not exceeding the sum of two hundred rupees, as the Collector of the District or Assistant Collector thinks reasonable.

Liability to punishment for extortion not affected.

An award of compensation under this section shall not bar or affect any penalty or punishment to which the person guilty of such extortion may be subject under the Indian Penal Code.

(E).—Deposit of Rent in Court.

Deposit of amount tendered by tenant and refused.

50. If any tenant tenders to the landholder full payment of the rent due from him, and if the amount so tendered be not accepted, and a receipt for the amount forthwith granted, the tenant may thereupon apply to the Collector of the District or Assistant Collector for leave to deposit such amount in his Court to the credit of the landholder.

Form and verification of application.

51. The application to the Collector of the District or Assistant Collector shall be as nearly as may be in the form (A) in the first schedule hereto annexed, and shall be verified in the manner hereinafter prescribed for the verification of plaints.

Penalty for false statement.

And the person making the verification shall be punishable, if the application contain any averment which he knows or believes to be false, or does not know or believe to be true.

Notice to issue on deposit being made.

52. The Collector of the District or Assistant Collector shall receive the amount which the tenant desires to deposit, and shall thereupon issue to the person to whose credit it has so been deposited, a notice in English or the vernacular language of the district in the form (B) in the first schedule hereto annexed, or to the like effect.

And such deposit shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

Mode of serving notice.

53. Such notice shall be served through the tahsíldár upon the person to whom it is addressed, or upon his recognized agent.

In their absence, the notice shall be affixed at the *chaupál*, or other conspicuous place in the village in which the land for which the rent is due is situate.

Payment to person served with notice on his application.

54. If at any time before the expiration of three years from the date of the deposit 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 be paid accordingly, unless it has been repaid or paid in accordance with the provisions next hereinafter contained.

Refund to depositor.

55. If no application be made by such person or his recognized agent, the sum shall be repaid to the depositor on the expiration of three years from the date of the deposit.

And at any time before the expiration of such period, on the joint application of the depositor and the person to whose credit the said sum was deposited, such sum shall be paid in such manner as the joint applicants desire.

Deposit in Court of rent claimed by two or more persons.

55A. When, owing to the death of the landlord or other cause, two or more persons severally claim the right to collect the rent from a tenant, the tenant may apply to the Collector of the District or the Assistant Collector for leave to deposit in Court the full amount of rent due from him, and such deposit, if made with the leave of the Collector or Assistant Collector, shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

The Collector of the District or Assistant Collector may, after such enquiry as he thinks necessary, direct payment of the amount deposited to such one of the persons claiming such rent as appears to him entitled to receive the same, or may order the same to remain in deposit pending decision by a competent Court.

No suit shall lie against the Secretary of State for India in Council or against any officer of Government in respect of any payment made under this section, but nothing herein contained shall affect the right of any person entitled to such payment to recover the amount thereof from any other person to whom it has been paid.

CHAPTER III.

DISTRESS.

Produce of land hypothecated for rent.

56. The produce of all land in the occupation of a cultivator shall be deemed to be hypothecated for the rent payable in respect of such land; and until such rent has been satisfied, no other claim on such produce shall be enforced by sale in execution of decree or otherwise;

Recovery of arrears by distress.

and when an arrear of rent is due from any cultivator, the person entitled to receive rent immediately from him may, instead of suing for the arrear as hereinafter provided, recover the same by distress and sale of the produce of the land in respect of which the arrear is due, under the rules contained in this chapter.

Distress of produce barred by security given for rent.

57. Provided—

(*a*) that when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to be distrained:

Sharer when entitled to distrain.

(*b*) that no sharer in any mahál shall have power to distrain upon any cultivator unless he is entitled to collect the whole rent from such cultivator:

Distress by manager.

(*c*) that no sharer in a joint undivided mahál shall exercise such power otherwise than through a manager authorized to collect the rents of the whole mahál on behalf of all the sharers therein:

Distress in pattídárí maháls.

(*d*) that in pattídárí maháls distress shall be made only through a lambardár, or, where the rent of a patti is not collected by a lambardár, through the pattídár who is entitled to collect the rent.

No distress for over-due arrear, nor, without agreement, for excess over past year's rent.

58. A distress shall not be made for any arrear which has been due in respect of any land for a longer period than one year:

nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless the rent has been enhanced under the provisions hereinbefore contained, or by order of a Settlement-officer, or unless the cultivator has agreed to pay such excess and such agreement has been attested before the kánúngo.

Distress by managers under Court of Wards, &c.

59. The power to distrain conferred by sections 56 and 57 may be exercised by managers under the Court of Wards and other persons lawfully entrusted with the charge of immoveable property;

and also by the agents employed by such persons as aforesaid, in the collection of rent, if expressly authorized by power-of-attorney in that behalf:

Liability for illegal act.

If any wrongful act is committed by any such agent, under colour of the exercise of the said power, such agent and his principal shall be jointly and severally liable to make compensation for such act.

Written authority to servants employed to distrain.

60. When any person, empowered to distrain property under section 56, section 57 or section 59, employs a servant or other person to make the distress, he shall give him a written authority for the same, and the distress shall be made in the name of the person giving such authority.

Standing crops and crops gathered liable to distress.

61. 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 power to distrain under the provisions of this Act.

Exception.

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

Defaulter to be served with written demand and account.

62. Before or at the time when a 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.

Mode of service.

The demand and account shall, if practicable, be served personally on the defaulter; or, if he abscond or conceal himself, so that they cannot be so served, shall be affixed at his usual place of residence.

Distress to be proportionate to arrear.

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

List of property to be prepared and copy served on owner.

Standing crops, &c., when distrained, may be reaped and stored.

64(*a*). Standing crops and other ungathered products may, notwithstanding the distress, be reaped and gathered by the cultivator, and he may store the same in such granaries or other places as are commonly used by him for the purpose.

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

(*c*). In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose.

Sale of products which cannot be stored.

(*d*). Crops or products which, from their nature, do not admit of being stored, may be sold before they are reaped or gathered, under the rules hereinafter provided; but in such case, the distress shall be made at least twenty days before the time when the crops, or products, or any part of the same are fit for reaping or gathering.

Assistance to distrainer opposed or apprehending resistance.

65. If a distrainer is opposed, or apprehends resistance, and desires to obtain the assistance of a public officer, he may apply to the Collector of the District or Assistant Collector, who may, if he thinks necessary, depute an officer to assist the distrainer in making the distress.

Distress to be withdrawn on tender of arrear and expenses before sale.

66. If at any time after property has been distrained and before the day fixed for putting it up to sale as hereinafter provided, the owner of the property tenders payment of the arrear demanded of him, and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

Application for sale.

67. Within five days from the time of the storing of any distrained crops or products,

or, if the crops or products do not, from their nature admit of being stored, within five days from the time of making the distress,

the distrainer shall apply for sale of the same to the officer for the time being authorized by the Local Government to sell distrained property within the tahsíl in which they are situate.

Contents of application.

68. The application shall be in writing, and shall contain—

(*a*) an inventory or description of the property distrained,

(*b*) the name of the defaulter and his place of residence,

(*c*) the amount due, and the date of the distress, and

(*d*) the place in which the distrained property is.

Fee for service of notice.

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

Procedure on receipt of application.

69. Immediately on receipt of the application, the said officer shall send a copy of it to the Collector of the District or Assistant Collector,

and shall serve a notice in the form (C) contained in the first schedule hereto annexed, or to the like effect, on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector of the District or Assistant Collector, within the period of fifteen days from the receipt of the notice.

He shall at the same time send to the Collector of the District or Assistant Collector, for the purpose of being put up in his office and in the office of the tahsildár, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain—

(*a*) a description of the property,

and shall specify—

(*b*) the demand for which it is to be sold, and

(*c*) the place where the sale is to be held,

Suspension of sale on receipt of Collector's certificate of institution of suit.

70. If a suit is instituted before the Collector of the District or Assistant Collector in pursuance of the aforesaid notice, the Collector of the District or Assistant Collector shall send to the officer referred to in section 67, or, if so requested, shall deliver to the owner of the distrained property, a certificate of the institution of such suit;

and on such certificate being received by, or presented to, the said officer, he shall suspend the sale.

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

71. A person whose property has been distrained in manner hereinbefore provided may, immediately after the distress, and before the issue of notice of sale, institute a suit to contest the demand of the distrainer.

When such suit is instituted, the Collector of the District or Assistant Collector shall proceed in the manner prescribed in the last preceding section.

If, thereafter, application for the sale of the property is made to the said officer, he shall send a copy of the application to the Collector of the District or Assistant Collector, and suspend further proceedings, pending the decision of the case.

Distress when to be withdrawn.

72. 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 a surety, binding himself to pay whatever sum may be adjudged to be due from him, with interest and costs of suit.

and when such bond is executed, the Collector of the District or Assistant Collector shall give to the owner of the property a certificate to that effect, and, if so requested, shall serve the distrainer with notice of the same;

and upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Collector of the District or Assistant Collector, the property shall be released from distress.

When sale may be proceeded with.

73. If the institution of a suit to contest the demand of the distrainer has not been certified, in manner hereinbefore provided, to the said officer, on or before the day fixed in the proclamation of sale, he shall, unless the said demand, with such costs of the distress as are allowed by him, be discharged in full, proceed, in manner hereinafter mentioned, to sell the property or such part of it as may be necessary to satisfy the demand with the costs of distress and sale.

Place of sale.

74. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the said officer is of opinion that it is likely to sell there to better advantage.

Manner of sale.

The property shall be sold by public auction, in one or more lots, as the officer holding the sale may think advisable;

Withdrawal of distress when demand and costs satisfied.

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.

75. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) be not offered for it, and if the owner of the property, or some person authorized to act on his behalf, apply to have the sale postponed until the next day, or, if a market be held at the place of sale, the next market-day, the sale shall be postponed until such day and shall be then completed whatever price may be offered for the property.

If fair price be not offered, sale may be postponed and shall be then completed.

76. The price of every lot shall be paid for in ready money at the time of sale, or as soon thereafter as the officer holding the sale thinks necessary;

Payment of purchase-money.

and, in default of such payment, the property shall be put up again and sold, and the deficiency in price (if any) which may happen on such second sale and all expenses attending such second sale shall, at the instance either of the distrainer or the owner of the property, be recoverable from the defaulter under the rules hereinafter contained for the execution of a decree for rent.

Re-sale on default.

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

Certificate to purchaser.

77. From the proceeds of every sale of distrained property under this Act, the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall send the amount so deducted to the Collector of the District or Assistant Collector.

Deduction, from proceeds, of costs of sale.

He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress, and of the issue of the notice and proclamation of sale prescribed in section 69, to such amount as, after examining the statement of expenses furnished by the distrainer, he thinks proper to allow.

Payment of distrainer's expenses.

The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale;

Discharge of arrear with interest.

and the surplus (if any) shall be delivered to the person whose property has been sold.

Surplus.

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

Sale-officers and employés prohibited from purchasing.

79. Officers holding sales under this Chapter are required to bring to the notice of the Collector of the District or Assistant Collector any material irregularities committed by distrainers under colour of this Act;

Report of irregularities by distrainer.

and if, in any case, on proceeding to hold any such sale, the officer holding it find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector of the District or Assistant Collector, who shall thereupon direct the issue of another notice and proclamation of sale under section 69, or pass such other order as he thinks fit.

Postponement of sale, and report to Collector when owner has not received due notice.

Order of Collector.

80. When an officer goes to any place for the purpose of holding a sale under this Act, and no sale takes place, either for the reason stated in section 79, or because the demand of the distrainer has been previously satisfied without any intimation of such satisfaction having been given by the distrainer to such officer, the charge of one anna in the rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained property.

Levy of charge when sale-officer attends, and no sale takes place.

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

Recovery from owner.

In every other case it shall be paid by the distrainer, and may be recovered by attachment and sale of his property under the warrant of the Collector of the District or Assistant Collector:

Recovery from distrainer.

Provided that in no case shall a larger amount than ten rupees be recoverable under this section.

Limit to charge.

81. When a suit has been instituted to contest the demand of a distrainer, and the distrained property has not been released on security, if the demand or any portion of it is adjudged to be due, the Collector of the District or Assistant Collector shall issue an order to the officer authorizing the sale of such property;

Order of sale when amount adjudged due.

and, on the application of the distrainer within five days from the receipt of such order by the officer, such officer shall publish a second proclamation in the manner prescribed in section 69, fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation;

Second proclamation of sale.

and, unless the amount adjudged to be due with the costs of distress be paid, shall proceed to sell the property in the manner hereinbefore provided.

Sale on failure to pay debt and costs.

82. (*a*) In all suits instituted to contest the distrainer's demand, he shall be required to prove the arrear in the same manner as if he had himself brought a suit for the amount under the provisions hereinafter contained.

In suit to contest his demand, distrainer to prove arrear.

(*b*) If the demand or any part thereof is found to be due, the Collector of the District or Assistant Collector shall make a decree for the amount in favour of the distrainer, and such amount may be recovered by sale of the property, as provided in the last preceding section, if the distress has not been withdrawn;

Recovery of amount decreed in favour of distrainer.

and, if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter,

or if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety.

Compensation in case of vexatious distress.

(*c*) If the distress is adjudged to be vexatious or groundless, the Collector of the District or Assistant Collector, besides directing the release of the distrained property, may award such compensation to the plaintiff as the circumstances of the case require.

Suit by person claiming property distrained for arrears alleged to be due from another.

83. (*a*) If any person claim 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 conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand.

Release of property on security being given.

(*b*) When any such suit is instituted, the property may be released upon security being given for the value of the same.

Order of Collector when claim dismissed.

(*c*) If the claim is dismissed, the Collector of the District or Assistant Collector shall make an order for the sale of the property, or for the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

Decree for release and compensation when claim upheld.

(*d*) If the claim is upheld, the Collector of the District or Assistant Collector shall decree the release of the distrained property with costs, and such compensation (if any) as the circumstances of the case require:

Saving of prior claim of person entitled to rent of land.

(*e*) Provided that no claim to any produce of land liable to distress under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any civil Court prevail against such prior claim.

Procedure where right to distrain is claimed by person other than distrainer.

84. If, in any case in which property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, the right to distrain for such arrears is claimed by or on behalf of any person other than the distrainer, on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by him before and up to the time of the commencement of the suit shall be enquired into, and in deciding the suit the result of such inquiry shall be taken into consideration:

Saving of right to sue in civil Court.

Provided that the decision of the Collector of the District or Assistant Collector shall not affect the right of any person who may have a legal title to the rent of the land to establish his title by suit in the civil Court if instituted within one year from the date of the decision.

Persons prevented from suing in time to save property from sale may sue for damages.

85. If 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, is prevented by any sufficient cause from bringing a suit to contest the demand or to try the right to the property, as the case may be, within the period allowed by section 69 or 83, and his property is in consequence sold, he may, nevertheless, institute a suit under this Act to recover compensation for such distress and sale.

Wrongful acts of distrainer.

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

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

or if the distress is not immediately withdrawn when it is required to be withdrawn by any provision of this Act,

the owner of the property may institute a suit under this Act to recover compensation for any injury which he has thereby sustained through any act or omission mentioned in the former part of this section.

Suit by owner against person distraining or selling without authority.

87. If any person not empowered to distrain property under section 56, 57 or 59, nor employed for the purpose under a written authority by a person so empowered, fraudulently distrains or sells, or causes to be sold, any property under colour of this Act, the owner of the property so distrained or sold may institute a suit under this Act to recover compensation from such person for any injury which the plaintiff has sustained from the distress or sale,

Penalty in addition to damages.

and the defendant shall be held to have committed criminal trespass, and shall be subject to the penalties provided for that offence by the Indian Penal Code, in addition to any damages which may be awarded against him in such suit.

Limitation of suits under sections 85, 86, 87.

88. Provided that every suit instituted under any of the three last preceding sections shall be commenced within the period allowed by section 94.

Procedure in case of resistance of distress.

89. (*a*) If any person resists a distress of property duly made under this Act, or forcibly or clandestinely removes any distrained property, the Collector of the District or Assistant Collector in charge of the Sub-division, upon complaint being made within fifteen days from the date of such resistance or removal, may cause the person accused to be arrested and brought with all convenient speed before the Collector or Assistant Collector, who shall, if possible, proceed forthwith to try the case.

(*b*) If the case cannot be at once heard, the Collector of the District or Assistant Collector may, if he think fit, require the party arrested to give

security for his person, and, in default of such security, may commit him to the civil jail until the case is tried,

and if the offence be proved and the offender be the owner of the property concerned, the Collector of the District or Assistant Collector may order him to be imprisoned in the civil jail for a term not exceeding six months, unless the whole arrear due to the distrainer, with all reasonable expenses and costs, is previously to the expiration of such term paid or levied under warrant of the Collector of the District or Assistant Collector by distress and sale of the property of the offender.

(*c*) If the offender be not the owner of the property concerned, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred rupees, or, in default of payment thereof, to imprisonment in the civil jail for a term which may extend to two months.

Proceedings of officers subject to revision and orders of Collector.

90. All proceedings of officers distraining, or assisting distrainers, or holding sales, under this chapter, shall be subject to the revision and orders of the Collector of the District or Assistant Collector in charge of a Sub-division of the District.

CHAPTER IV.

PROCESS.

Mode of serving process.

91. (*a*) Every process issued by a Collector of a District or Assistant Collector under this Act shall be under his seal and signature, and shall be served or executed by the Názir, or by such other officer as the Collector of the District or the Assistant Collector may direct, at the cost of the party at whose instance it is issued.

Deposit before issue.

(*b*) The amount of such cost, and, in the case of summons to a witness, the sum required for his travelling expenses, shall be deposited in Court before the process is issued:

Power to direct service gratis.

(*c*) Provided that, if in any case the Collector of the District or the Assistant Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

Punishment for resisting process.

92. Any resistance or opposition to the lawful process of a Collector of the District or Assistant Collector or under this Act may be punished by him according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of civil justice.

Power to issue summons and warrant.

When, in any such case, the offender is not present, the Collector of the District or Assistant Collector may summon him to answer to the charge: and, if after due service of the summons he fails to attend, may issue a warrant for his arrest.

CHAPTER V.

JURISDICTION OF COURTS.

Suits cognizable by revenue Courts only.

93. Except in the way of appeal as hereinafter provided, no Courts other than Courts of Revenue shall take cognizance of any dispute or matter in which any suit of the nature mentioned in this section might be brought, and such suits shall be heard and determined in the said Courts of Revenue in the manner provided in this Act, and not otherwise:

(*a*) suits for arrears of rent, or, where rent is payable in kind, for the money-equivalent of rent, on account of land or on account of any rights of pasturage, forest-rights, fisheries or the like;

(*b*) suits to eject a tenant for any act or omission detrimental to the land in his occupation or inconsistent with the purpose for which the land was let;

(*c*) suits to cancel a lease for the breach of any condition binding on the tenant, and which, by law, custom or special agreement, involves the forfeiture of the lease;

(*cc*) suits for compensation for or to prohibit, any act, omission or breach mentioned in clause (*b*) or clause (*c*);

(*d*) suits for the recovery of any over-payment of rent, or for compensation under section 48 or 49;

(*e*) suits for compensation for withholding receipt for rent paid;

(*f*) suits for contesting the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in the exercise of the said power, or for compensation for wrongful acts or omissions of a distrainer;

(*g*) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues for which the co-sharers may be responsible to the lambardár;

(*h*) suits by recorded co-sharers for their recorded share of the profits of a mahál, or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts;

(*i*) suits by muáfidárs, or assignees of the Government-revenue, for arrears of revenue due to them as such;

(*j*) suits by taluqdárs and other superior proprietors for arrears of revenue due to them as such;

(*k*) suits by recorded co-sharers to recover from a recorded co-sharer who defaults arrears of revenue paid by them on his account.

Limitation of suits under this Act.

94. Suits for arrears of rent or revenue, or for a share of the profits of a mahál, or of village-expenses or other dues, shall not be brought after three years from the day on which the arrears or share became due.

Suits relating to distress, not being suits to contest the demand or to try the right to the property, shall not be brought after three months from the day on which the right to sue accrued:

All other suits must be brought within one year from the day on which the right to sue accrues, unless otherwise specially provided for in this Act.

The day on which the arrears become due or the day on which the right to sue accrues (as the case may be) shall be excluded in computing the periods of limitation prescribed by this section.

In the absence of any express agreement among the co-sharers and of any order by the Settlement-officer under the North-Western Provinces Land-revenue Act, 1873, section 65, clause (*g*), the

Board may from time to time, with the previous sanction of the Local Government, make rules for fixing the dates on which profits shall be divisible by the lambardárs.

95. No Courts other than Courts of revenue shall take cognizance of any dispute or matter on which any application of the nature mentioned in this section might be made: and such applications shall be heard and determined in the said Courts in manner provided under this Act, and not otherwise:—

Applications cognizable by revenue Courts only.

(*a*) Application to determine the nature and class of a tenant's tenure, under section 10.

(*b*) Application by a landholder, or his agent, to compel a patwári to produce his accounts relating to land.

(*c*) Application to resume rent-free grants under section 30, or to assess to rent land previously held rent-free.

(*d*) Application from a landholder to eject a tenant under section 35, or to have a notice of ejectment issued and served under section 38.

(*e*) Applications made by a tenant under section 39.

(*f*) Application from a landholder, under section 40, for assistance to eject a tenant.

(*g*) Application from a tenant or landholder to determine the value of any standing crop, or ungathered products of the earth, belonging to the tenant and being on the land at the time of his ejectment, under section 42.

(*h*) Application by a landholder to determine rent payable for land used by a tenant for the purpose of tending or gathering in the crop, under section 42.

(*i*) Application by a landholder or tenant for assistance in the division or appraisement of a standing crop, under section 43.

(*j*) Application by a landholder or tenant to determine compensation for improvements of land.

(*k*) Application by a tenant for leave to deposit rent.

(*l*) Application for enhancement or determination of rent.

(*m*) Application for compensation for wrongful dispossession.

(*n*) Application for the recovery of the occupancy of any land of which a tenant has been wrongfully dispossessed.

(*o*) Application for abatement of rent.

(*p*) Application for leases or counterparts, and for the determination of the rates of rent at which such leases or counterparts are to be delivered.

(*q*) Application under section 7 to have the holding of an ex-proprietary tenant divided off.

(*r*) Application under section 22 A to survey land.

(*s*) Application under section 33 A to have a notice of relinquishment declared invalid.

(*t*) Application to take out of deposit any amount deposited under section 55 A.

For the purposes of the Court-fees Act, 1870, applications under clauses (*c*), (*l*), (*m*), (*n*), (*o*) and (*p*) of this section shall be deemed to be plaints in suits.

95A. When any order has been made on an application under this Act, no process for the execution of such order shall be issued on an application made after the lapse of one year from the date of such order, except when special provision is otherwise made in this Act.

Limitation of process of execution on applications.

96. (*a*) All applications under section 95 shall be made in the district in which the land, crops or products referred to is or are situate.

Points of procedure relating to applications under section 95.

(*b*) All orders passed on applications under section 95 shall be proved in the same manner, and when proved shall have the same effect, as if they were judgments of the civil Courts.

(*c*) In cases wherein a specific sum of money is adjudged to be due, or any costs or damages are awarded, all such orders may be executed by any process in use for the recovery of an arrear of revenue or rent.

(*d*) In cases wherein possession of immoveable property is adjudged, the officer making the award may deliver over possession in the same manner, and with the same power, in regard to contempts, resistance and the like, as may be lawfully exercised by the civil Courts in execution of their own decrees.

(*e*) Applications under clauses (*m*) and (*n*) of section 95 shall not be brought after six months from the date of the wrongful dispossession.

96A. All suits and applications under this Act may, with the consent of the parties, be referred to arbitration under section 220 to section 231 (both inclusive) of the North-Western Provinces Land-revenue Act, 1873.

Reference to arbitration.

97. The Local Government may invest any officer with the powers of an Assistant Collector of the first or second class under this Act, and may at any time withdraw such powers.

Power to invest officers with Assistant Collector's powers, and withdraw them.

98. Assistant Collectors of either class shall have, as such, power to try suits and applications of the following descriptions:—

Suits and applications cognizable by Assistant Collectors.

(*a*) suits for arrears of rent or the money equivalent of rent on account of land, or on account of any rights of pasturage, forest rights, fisheries or the like;

(*b*) suits for compensation for withholding receipts for rent paid, under section 48;

(*c*) suits to contest the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in exercise of the said powers, or for compensation for wrongful acts or omissions of a distrainer;

(*d*) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues, for which the co-sharers may be responsible to the lambardár;

(*e*) suits by muáfidárs or assignees of the Government-revenue for arrears of revenue due to them as such;

(*f*) suits by taluqdárs or other superior proprietors for arrears of revenue due to them as such;

(*g*) applications by a landholder, or by an agent employed by a landholder, to compel the production of accounts by patwáris;

(*h*) applications by a tenant or landholder to determine the value of any standing crops or ungathered products of the earth, and being on the land at the time of his ejectment, under section 42;

(*i*) applications by a landholder to determine the amount of rent payable by a tenant using land for the purpose of tending or gathering in crops, under section 42;

(*j*) applications by a landholder or a tenant for assistance in the division or appraisement of standing crops, under section 43;

(*k*) applications by tenants for leave to deposit rent;

(*l*) suits under section 93, clause (*k*), to recover arrears of revenue.

(*m*) applications under section 22 A to survey land.

99. Assistant Collectors of the first class, in addition to the suits and applications specified in section 98, shall have power to try suits and applications of the following descriptions:—

Additional suits and applications triable by Assistant Collectors, first class.

(*a*) suits to eject a tenant for any act or omission detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let;

(*b*) suits to cancel a lease for any breach of any condition binding on the tenant;

(*bb*) suits for compensation for, or to prohibit, any act, omission or breach mentioned in clause (*a*) or clause (*b*);

(*c*) suits for the recovery of any over-payment of rent or for compensation, under section 48 or section 49;

(*d*) suits by co-sharers for their shares of the profits of a mahál or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts;

(*e*) applications by a landholder to eject a tenant, under section 35;

(*f*) applications under section 39 by a tenant contesting notice of ejectment;

(*g*) applications by a landholder under section 40, for assistance to eject a tenant, on whom notice of ejectment has been served;

(*h*) applications for compensation for wrongful dispossession;

(*i*) applications by a landholder or tenant to determine the amount to be paid as compensation for improvements;

(*j*) applications to recover the occupancy of any land from which a tenant has been wrongfully dispossessed by the landholder;

(*k*) applications under section 30 for the resumption of rent-free grants or for the assessment to rent of land hitherto held rent-free;

(*l*) applications under section 7 to have the holding of an ex-proprietary tenant divided off;

(*m*) applications under section 33 A to have a notice of relinquishment declared invalid;

(*n*) applications to take out of deposit amounts deposited under section 55 A.

100. In addition to the powers specified in sections 98 and 99, an Assistant Collector of the first class, specially empowered by Government in this behalf, shall have power to try the following applications:

Additional applications triable by Assistant Collector, first class, with special powers.

(*a*) applications for enhancement or determination of rent;

(*b*) applications for abatement of rent;

(*c*) applications for leases or counterparts, and the determination of the rates of rent at which such leases or counterparts are to be delivered;

(*d*) applications to determine the nature or class of a tenant's tenure.

101. The Collector of the District, or any Assistant Collector in charge of a sub-division of a district, may make over any case, or class of cases, for inquiry and decision, from his own file, to any of his subordinates competent to deal with such case or class of cases under the provisions of this Act.

Power to make over cases.

102. Collectors of Districts, and Assistant Collectors in charge of sub-divisions of districts, may, respectively, withdraw any case or class of cases from any officers subordinate to them, and may deal with such case or class of cases themselves, or refer it for disposal to any other such Revenue-officer competent to deal with the same under the provisions of this Act.

Power to withdraw cases.

103. The Collector of the District may exercise—

Powers exerciseable by Collector of District.

(*a*) all powers given by this Act to Collectors of Districts,

(*b*) all powers which by this Act are conferred, or can be conferred, on Assistant Collectors.

The Local Government may invest any officer in charge of a sub-division of a district with all or any of the powers conferred by this Act on a Collector of a District.

Investment of officer in charge of sub-division with powers of Collector of District.

In conferring powers under this Act, the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

Mode of conferring powers.

CHAPTER VI.

PROCEDURE IN SUITS UP TO JUDGMENT.

104. Suits under this Act shall be instituted in the district in which the subject of the suit, or some part thereof, is situate,

Place of instituting suits.

and all such suits shall be commenced by presenting to the Court a plaint, which shall contain—

Plaint.

(*a*) the name, description and place of abode of the plaintiff;

(*b*) the name, description and place of abode of the defendant, so far as they can be ascertained;

(*c*) the subject-matter of the claim, and its amount or value computed according to the Court-fees Act, 1870; and

(*d*) the date on which the right to sue accrued.

105. For the purpose of suing or being sued under this Act, the managers of mahals, whether held under the Court of Wards or under direct management, shall be deemed to be landholders.

Managers of mahals to be, for purpose of litigation, deemed landholders.

106. No co-sharer in an undivided property shall, in that character, be entitled separately to sue a tenant under this Act, unless he is authorized to receive from such tenant the whole of the rent payable by such tenant; but nothing in this section shall affect any local custom or any special contract.

Suits by co-sharers in undivided property.

107. The plaint shall be presented by the plaintiff, or by an agent duly authorized on his behalf, who has personal knowledge of the facts of the case, or by an agent accompanied by a person who has such knowledge.

Plaint by whom presented.

The plaint shall be subscribed and verified at the foot by the plaintiff or his agent in the manner following, or to the like effect:—

Verification of plaint.

"I, *A. B.*, the plaintiff named in the above plaint, do declare that what is stated therein is true to the best of my knowledge and belief."

If the plaint contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

False averment.

108. If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Court at the time of presenting his plaint.

Document relied on by plaintiff to be presented with plaint.

Unless such document be so delivered, or its non-production be sufficiently excused, or unless the Court see fit to extend the time for producing the same, it shall not afterwards be admitted.

Admission afterwards.

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

Procuring production of document in possession of defendant.

110. If the suit be for the recovery of an arrear of rent or revenue, or of a share of profits or village-expenses, or other dues under section 93, the plaint shall specify the name of the village and estate, and of the pargana or other local division in which the land is situate:

Plaint in suits for arrears of rent.

and, if the suit be for an arrear of rent alleged to be due from any tenant, the plaint shall also specify the quantity of land, and (where fields have been numbered in a Government-survey) the number of each field, and yearly rent of the land; the amount (if any) received on account of the year for which the claim is made; and in all cases coming under this section the plaint shall specify the amount in arrear, and the time in respect of which it is alleged to be due.

111. If the suit be for the ejectment of a tenant from any land, the plaint shall describe (as circumstances may require) the extent, situation and designation of the land; and, if necessary for its identification, shall set forth its boundaries.

Plaint in suits for ejectment.

112. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Court may, at its discretion, return it to the plaintiff, or allow it to be amended.

Return or amendment of plaint.

112A. The Court may, on or before the first hearing upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

Court may dismiss or add parties.

and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

No person shall be added as a plaintiff without his own consent thereto.

Consent of person added as plaintiff.

All parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and the proceedings as against them shall be deemed to have begun only on the service of such summons:

Defendants added to be served.

Provided that, when a defendant dies and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

112B. Where a defendant is added, the plaint, if previously filed, shall, unless the Court directs otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

When defendant added, plaintiff to amend.

112C. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for mis-joinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing, and any such objection not so taken shall be deemed to have been waived by the defendant.

Time for taking objections as to non-joinder or mis-joinder of parties.

112D. If the plaint be admitted, the plaintiff shall present as many copies on plain paper of the plaint as there are defendants, unless the Court, by reason of the length of the plaint, or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required in the suit, in which case he shall present such statements.

Procedure on admitting plaint.

Concise statements.

113. If the plaint be in proper form, the Court, except as otherwise hereinafter specially provided, shall direct the issue of a summons to the defendant,

Issue of summons.

and if the plaintiff require the personal attendance of the defendant, and satisfy the Court that such attendance is necessary, or the Court of its own accord require such attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons.

Order for personal attendance or appearance by agent.

If the plaintiff or the Court does not require the personal attendance of the defendant, the summons shall order the defendant to appear either personally or by an agent duly authorized on his behalf, who has personal knowledge of the subject, or is accompanied by a person who has such personal knowledge.

114. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held,

Fixing of day to be specified in the summons.

and the summons shall order the defendant to produce any document in his possession or power of which the plaintiff demands inspection, or upon which the defendant relies in support of his defence.

Order to produce documents.

It shall also direct him to bring with him his witnesses, if they are willing, to attend without issue of process,

Order to bring witnesses.

and it shall be in the form (D) contained in the first schedule hereto annexed, or to the like effect.

Form of summons.

It shall be accompanied with one of the copies or concise statements mentioned in section 112 D.

Copy or statement annexed to summons.

115. The summons shall be served by delivering a copy thereof to the defendant personally when practicable;

Mode of serving summons.

or, if the copy cannot be delivered to the defendant personally, by affixing copy of the summons to some conspicuous part of his usual residence, and also affixing a copy of the same in the Court.

116. If the summons be served by delivering a copy to the defendant personally, the Názir shall endorse on the summons the fact of such service.

Endorsement on summons.

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

117. If the usual residence of the defendant be in another district, the summons shall be sent by the public post to the Collector of such district, who shall issue the summons, and return the same, after service, with the prescribed endorsement, to the officer by whom it was transmitted to him.

Service of summons in another district.

117A. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post, if there be postal communication between such place and the place where the Court is situate.

Service when defendant resides out of British India and has no agent to accept service.

117B. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent by post or otherwise for the purpose of being served upon the defendant; and if the Resident or Agent return the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of such service.

Service through British Resident or Agent of Government.

Deposit of cost of serving summons or warrant.

118. The amount of the cost of serving the summons, or, if a warrant be issued as provided in the next following section, of serving the warrant,

shall in all cases be deposited in Court by the plaintiff within such time before the issue of such summons or warrant as is fixed by the Court issuing the process.

If the said amount be not so deposited (except where the Court in exercise of the discretion reserved to it in section 91 allows the summons to be served gratis), the case shall be struck out of the list of pending suits;

Effect of failure to deposit.

but in such case the plaintiff may present another plaint at any time within the period allowed by the rules herein contained for the limitation of suits.

119. (*a*) If in any suit against a tenant for the recovery of an arrear of rent, or in any suit for the recovery of an arrear of revenue, or a share of profits or village-expenses or other dues, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, the plaintiff small present, with his plaint, an application for the issue of such warrant.

Procedure when plaintiff desires issue of warrant of arrest.

(*b*) When such application is presented, the Court shall examine the plaintiff or his agent, and inspect the documents adduced by him in support of his claim; and if *primâ facie* it appear to the Court that the claim is well founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Court may issue a warrant for his arrest.

(*c*) The Court shall fix a reasonable time for the return of the warrant, and the officer entrusted with the service thereof shall, at the time of arresting the defendant, deliver to him one of the copies or concise statements mentioned in section 112D and a notice requiring him, if he contest the claim, to bring with him any document upon which he relies in support of his defence.

(*d*) Every warrant issued and notice delivered under this section shall be respectively in the forms (E) and (F) in the first schedule hereto annexed, or to the like effect.

120. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Court.

Procedure after arrest of defendant.

121. When a defendant is brought before the Court under warrant, the Court shall, with all convenient speed, proceed to try the case in the manner hereinafter provided,

Procedure when defendant is brought before Court under warrant.

and if the suit cannot be at once adjudicated, the Court may, if it think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is pending, or until execution of the final decree which may be passed thereon,

and may commit him to the civil jail to be there detained until he furnishes such security or deposits such sum as the Court orders.

The security-bond shall be in the form (G) contained in the first schedule hereto annexed, or to the like effect.

Form of security-bond.

122. If the defendant cannot be arrested under the warrant, the Court, on the application of the plaintiff, shall either postpone the case for such period as to it seems proper, in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation, to be affixed in its own office and at the residence of the defendant, appointing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice, at the residence of the defendant.

Procedure when defendant cannot be arrested under warrant.

If the defendant appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding section.

123. If it appear to the Court that the arrest of the defendant was applied for without reasonable cause, the Court may, in its decree, award to him such sum not exceeding one hundred rupees as it may deem a reasonable compensation for any injury or loss which he has sustained by reason of such arrest, or of his detention in jail during the pendency of the suit.

Compensation for arrest applied for without reasonable cause.

124. If on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case may be struck off, with liberty to the plaintiff to bring a fresh suit, unless precluded by the rules herein contained for the limitation of suits.

Consequence of neither party appearing on day fixed.

125. If on any such day only the defendant appears, the Court shall pass judgment against the plaintiff by default, unless the defendant admits the plaintiff's right to the relief which he claims, in which case the Court shall proceed to give judgment for the plaintiff upon such admission without costs:

Judgment by default.

Judgment upon admission of claim.

Provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

Proviso.

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

If plaintiff only appear, Court may proceed *ex parte*.

127. If the defendant appear on any subsequent day to which the hearing of the suit is postponed under the last preceding section, the Court may, upon such conditions, if any, as to costs or otherwise as it thinks proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

If defendant appear on adjourned hearing, Court may allow him to be heard in answer.

128. (*a*) No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance.

No appeal from judgment *ex parte* or by default;

(*b*) But in all such cases, if the party against whom judgment has been given appears, either in person or by agent, if a plaintiff, within fifteen days from the date of the Court's decree, and, if a defendant, within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period, and shows sufficient cause for his previous non-appearance, and satisfies the Court that there has been a failure of justice, the Court may, upon such terms as to costs or otherwise as it thinks proper, revive the suit and alter or rescind the judgment according to the justice of the case.

but Court may revive suit and alter or rescind judgment.

(*c*) But no judgment shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

Adverse party to be summoned.

129. When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned, for sufficient reason to be recorded by the Court, the Court shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other party or his agent.

Examination.

130. If either of the parties be not bound to attend personally, any agent by whom he appears, or any person accompanying such agent, may be examined and cross-examined in like manner as the party himself would have been if he had attended personally.

Examination and cross-examination of agents.

131. At the time of the examination, the defendant may, if he think fit, file a written statement in his defence.

Defendant may file written statement.

Such written statement shall be subscribed and verified in the manner hereinbefore provided for subscribing and verifying plaints, and if it contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

Verification of written statement.

False averment.

132. The examination of the parties or their agents, or such other persons as aforesaid, shall be according to the law for the time being in force relative to the examination of witnesses in the civil Courts.

Mode of examination.

The substance of the examination shall be reduced to writing in the mother-tongue of the presiding officer, and shall be filed with the record.

133. If either of the parties produce a witness on such day, the presiding officer may take the evidence of such witness.

Witness produced may be examined.

134. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit:

Document relied on by defendant to be produced at first hearing.

and unless such document be so delivered, or its non-production be sufficiently excused, or unless the presiding officer see fit to extend the time for delivering the same, it shall not afterwards be admitted.

135. If after the examination required by section 129, and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can be properly made without further evidence, the Court shall make its decree accordingly.

Decree after examination, if no further evidence is required.

136. If on such examination as aforesaid either party is absent and his agent is unable to answer any material question relating to the case which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the case to a future day, and direct that the party whose agent was unable to answer as aforesaid shall attend in person on such day;

Party to attend in person when his agent is unable to answer.

and if such party fails to appear in person on the day appointed, the Court may pass judgment as in case of default, or make such other order as it deems proper in the circumstances of the case.

Judgment or order if he fail to appear.

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

Procedure when parties at issue on question requiring evidence.

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

Parties to produce witnesses or procure attendance by summons.

139. The law and rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination, remuneration and punishment of witnesses, whether parties to the case or not, in cases before the civil Courts, shall, except so far as may be inconsistent with the provisions herein contained, apply to suits under this Act.

Provisions regarding attendance, examination, &c., of witnesses.

140. If on the day fixed for the trial of any issue neither of the parties appear, the case may be struck off, with liberty to the plaintiff to bring a fresh suit.

Case to be struck off if neither party appears.

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

Trial of issue *ex parte*.

141. When suits under this Act are instituted or defended by agents employed in the collection of rent or management of land, in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such agents;

Provisions to apply when suits are instituted or defended on behalf of landholders by agents.

and anything which by this Act is required or permitted to be done by a party in person may be done by any such agent as aforesaid.

Processes served on any such agent shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person:

Processes served on such agents.

and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such agent.

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

Personal attendance of female plaintiff or defendant when not required.

143. Any party to a suit may employ an authorized agent to conduct the case on his behalf:

Parties may employ agents.

but the employment of such agent shall not excuse the personal attendance of the plaintiff or defendant, in cases where his personal attendance is required by the summons, or any order of the Court;

Personal attendance when not excused.

and no fee for any agent shall be charged as part of the costs of suit in any case under this Act, unless the Court certifies that, under the circumstances of the case, such fee is proper to be allowed.

Fee for agents not chargeable as costs.

144. The Court may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit,

Court may grant time or adjourn hearing.

and may also, from time to time, in order to the production of further evidence, or for other sufficient reason to be recorded by the Court, adjourn the hearing of any case to such day as to it may seem fit.

145. The presiding officer may, at any stage of a case, cause a local enquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of Government, with the consent of the authority to whom such officer is subordinate, or may himself proceed to the spot and make such local enquiry in person.

Court may cause local enquiry and report, or may itself enquire.

The provisions of the law for the time being in force relative to local inquiries by Amíns or Commissioners, under orders of the civil Courts, shall apply to any local inquiry made by any officer under this section,

Provisions applied to such inquiry.

and, so far as they are applicable, to inquiries made by the presiding officer of the Court in person.

In the latter case the presiding officer, after completing the inquiry, shall record such observations as appear to him appropriate, and the observations so recorded shall form part of the proceedings in the suit.

Record in case of inquiry by Court.

146. The defendant in any suit under this Act may pay into Court such sum of money as he thinks a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and such sums shall be paid to the plaintiff.

Defendant may pay admitted debt and costs into Court.

If the defendant deposit less than the sum claimed and the plaintiff elect to proceed in the case, and ultimately recover no further sum than has been paid into Court, the plaintiff shall be charged with any costs incurred by the defendant in the suit after such payment.

Plaintiff chargeable with subsequent costs if he proceed and recover no further sum.

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

No interest to plaintiff after date of deposit by defendant.

148. When, in any suit between a landholder and a tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the tenant is disputed on the ground that some third person has actually and in good faith received and enjoyed such rent before and up to the time when the right to sue accrued, such third person may be made a party to the suit,

In suits where right to receive rent is disputed, third person who has received it may be made a party.

and the question of such receipt and enjoyment of the rent by such third person may be enquired into, and the suit shall be decided according to the result of such enquiry:

Provided that the decision of the Court shall not affect the right of either party entitled to the rent of such land to establish his title by suit in the civil Court, if instituted within one year from the date of the decision.

Saving of right to sue in civil Court to prove title to rent.

149. Whenever a decree is given for the ejectment of a tenant, or the cancelment of his lease, on account of any act or omission by which the land in his occupation has been damaged, or which is inconsistent with the purpose for which the land has been let, the Court may, if it think fit, allow him to repair such damage within one month from the date of the decree, or order him to pay such compensation, within such time, or make such other order in the case, as the Court thinks fit,

Court may allow tenant to repair damage caused by certain acts or omissions.

and if such damage be so repaired, or compensation so paid, or order obeyed, the decree shall not be executed.

150. Every judgment under this Chapter shall be pronounced in open Court.

Delivery of judgment.

151. The judgment shall be written in the mother-tongue of the presiding officer, and shall contain the reasons for the same, and shall be dated and signed by the presiding officer at the time it is pronounced:

Its language and contents.

Provided that, where his mother-tongue is not English, the judgment may be written in English, if he is able to write a clear and intelligible decision in that language.

When it may be in English.

151A. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

To direct payment of costs.

151B. Except as hereinbefore provided, the Court shall have full power to give and apportion costs of every suit in any manner it thinks fit; and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power; but if the Court directs that the costs of any suit shall not follow the event, the Court shall state its reasons in writing.

Power of Court as to costs.

151C. The Court may direct that the costs payable to one party by another shall be set off against sums admitted or found in the suit to be due from the former to the latter.

Costs may be set off.

151D. Except as hereinbefore provided, the Court may give interest at any rate not exceeding six per cent. per annum, on any sum decreed or found to be due, or on costs.

Power to give interest.

152. Every officer invested with powers under this Act may hold a Court for hearing and determining suits under this Act in any place within the limits of the district to which he is appointed.

Power to hold Court in any place within district.

Every hearing shall be in open Court, and the parties to the suit or their authorized agents shall have due notice to attend in such place.

CHAPTER VII.

PROCEDURE IN EXECUTION OF DECREES IN SUITS.

153. If the decree be for the ejectment of any tenant from land occupied by him, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree thereto.

Mode of executing decree for ejectment of tenant.

If any opposition is made to the execution of the order for giving such possession or occupancy, by the party against whom the order is made, the Magistrate, on the application of the Collector of the District or Assistant Collector, shall give effect to the same.

Magistrate to give it effect in case of opposition.

154. If the decree be for the payment of arrears of rent or revenue, or of money, and the defendant has been committed to jail, or appear in Court pursuant to the conditions of any security-bond given under

Power to order detention in, or commitment to, civil jail in certain cases.

section 121, the Collector of the District or Assistant Collector may order that he be detained in, or committed to, the civil jail, unless he immediately pays into Court the amount of the decree with costs, or otherwise complies with the terms of the decree.

155. If the judgment-debtor has given security for his appearance, and is not present when judgment is pronounced, and the surety fails to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety.

Process against surety on failure to deliver judgment-debtor into custody.

156. (*a*). A writ of execution may be issued against either the person or the property of a judgment-debtor;

Process of execution against person or property, but not both.

but process shall not be issued simultaneously against both person and property.

(*b*). Such writ may be issued on the oral application of the judgment-creditor or his agent, made at the time the decree is passed, or, thereafter, upon the written application of the judgment-creditor or his agent.

Applications on which it may issue.

(*c*). Writ of execution against the person or moveable property of a debtor shall be in the form (H) or (I) contained in the first schedule hereto annexed, or to the like effect.

Form of writ of execution.

157. Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor;

Execution against moveable property.

but, if the creditor is unable to furnish such list, he may apply for a general attachment of the debtor's effects, to the amount of the judgment and costs.

In either case, the property to be seized shall be pointed out to the officer entrusted with execution of the process, by the creditor or his agent:

Provided that no implements of husbandry, or cattle actually employed in agriculture, or tools of artisans, or necessary wearing apparel of the judgment-debtor, his wife or children, shall be attached under this section.

Articles exempted from attachment.

158. Every writ of execution shall bear date on the day on which it is signed by the Collector of the District or Assistant Collector, and shall continue in force for such period as he may direct (not being more than sixty days) calculated from such date.

Date and duration of writs.

159. Second and successive writs of execution may be issued by order of the Collector of the District or Assistant Collector on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

Second and successive writs.

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

After one year execution not to issue without notice to party concerned.

161. Execution on a judgment shall not issue against the heir or other representative of a deceased party, unless notice to appear and be heard has been previously served on such heir or other representative.

Execution not to issue against heir or representative of deceased party without notice.

162. No process of execution shall be issued on a judgment under this Act, when the application for the issue of such process is made after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred rupees;

No process of execution after three years, unless judgment be for sum exceeding 500 rupees.

in which case the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the civil Court.

Regulation of period in such case.

163. If a writ issues for taking any person in execution, the officer charged with the execution of the writ shall bring him with all convenient speed before the Collector of the District or Assistant Collector.

Procedure in execution of writ against person.

If such person does not then deposit in Court the full amount specified in the writ,

or make such arrangement for the payment of the same as is satisfactory to the judgment-creditor,

or satisfy the Collector of the District or Assistant Collector that he has no present means of paying the same amount,

the Collector of the District or Assistant Collector shall send him to the civil jail, there to remain for such time as may be directed by a warrant addressed to the keeper of the jail, unless in the meanwhile he pays the full amount for the payment of which he is liable under the decree:

Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three months when the amount decreed (exclusive of costs) does not exceed fifty rupees,

Limit of imprisonment.

or six months when such amount does not exceed five hundred rupees,

or two years in any other case.

164. (*a*.) Any person once discharged from jail shall not be imprisoned a second time under the same judgment.

No person to be imprisoned a second time under same judgment.

(*b*.) If the amount due under the decree does not exceed one hundred rupees, the Collector of the District or Assistant Collector may declare him absolved from further liability under that decree, and such liability shall thereupon be extinguished.

When further liability extinguished.

(*c*.) In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to him from attachment in execution of the same.

When not extinguished.

165. Every person applying for the issue of a warrant of arrest under section 119, or suing out process of execution against the person of any judgment-debtor, shall deposit in Court, when the warrant issues, diet-money for thirty days at such rate not exceeding two annas per diem, as the Collector of the District or Assistant Collector may direct, unless for any special reason he directs that deposit be made at a higher rate, which shall not exceed four annas per diem.

Diet-money to be deposited at time of issue of warrant.

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

Effect of non-payment of diet-money in advance during imprisonment.

167. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit,

Diet-money spent to be costs in suit.

and any diet-money not so spent shall be returned to the person who deposited the same.

Refund of remainder.

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

Procedure in executing writ against moveable property.

A copy of the said proclamation and list shall be sent to the Collector of the District or Assistant Collector, and shall be affixed in his office.

169. No moveable property taken in execution under this Act shall be sold before the expiration of ten days next after the day on which such property is so taken.

Time to elapse before sale of moveable property.

Until such sale the property shall be deposited in some fit place, or it may remain in custody of some fit person approved by the officer executing the writ.

Custody meanwhile.

The provisions of sections 74 to 78 (both inclusive), so far as the same are applicable, shall apply to sales under this section.

Provisions applied to sale.

170. No irregularity in publishing or conducting a sale of any moveable property under an execution shall vitiate such sale.

Sale not vitiated by irregularity.

But any person injured by such irregularity may recover compensation for such injury by suit in the civil Court:

Right to sue for compensation.

Provided that such suit be brought within one year from the date of sale.

Limitation.

171. In the execution of any decree for the payment of arrears of rent or revenue, or of money, under this Act, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor, except the materials of buildings actually occupied by a debtor who is an agriculturist.

In executing decrees for money when execution may be applied for against immoveable property.

172. If the immoveable property against which execution is applied for be other than a mahál, or a share of a mahál, process shall be issued in the same manner as for the attachment and sale of moveable property: and the provisions of sections 168, 169 and 170 shall be applicable.

Process when the immoveable property is not a mahál.

In the event of the sale of such property being completed, possession thereof shall be given to the auction-purchaser by the Collector of the district in which such property is situate.

Possession to be given to auction-purchaser.

173. When such property is a mahál, or a share of a mahál, the decree shall be sent for execution to the Collector of the District in which such property is situate,

Procedure when it is a mahál.

and if the judgment-debtor satisfies the Collector of the District that there is reasonable ground to believe that the amount of the judgment-debt may be raised by mortgage of the property, or by letting it on lease, or by disposing by private sale of a portion of the property or any other property belonging to the judgment-debtor, the Collector of the District may, on the application of the judgment-debtor, postpone the sale for such period as the Collector of the District thinks proper to enable the judgment-debtor to raise the amount,

and if the judgment-debtor satisfies his creditor, the execution shall be stayed, and the Collector of the District shall report the fact to the Court by which the decree was made.

174. If the judgment-debtor obtaining a postponement of the sale fails to satisfy his creditor within the period so fixed, or, if the judgment-debtor does not apply for, or applies for but does not obtain, a postponement of the sale, and the Collector of the District considers that the sale of the mahál or share is inexpedient, and that satisfaction of the decree may be made by means of a temporary alienation of the property,

Procedure where judgment-debtor fails to satisfy creditor within further time, or Collector thinks sale inexpedient.

the Collector of the District shall cause an accurate rent-roll of the property to be prepared, and ascertain the annual income derivable therefrom.

If, in the opinion of the Collector of the District, such income is sufficient to pay off the judgment-debt with interest at six per cent. per annum, within any period not exceeding fifteen years from the date of the decree, he may transfer the property to the judgment-creditor, or if the judgment-creditor refuse to take it, to some other person, or he may hold it under his own management, for such period not exceeding fifteen years, as may be sufficient for the recovery of the debt with interest as aforesaid, and on such conditions as to the payment of such debt and interest as he deems expedient.

Power to transfer property to judgment-creditor.

Power to hold property under management.

Orders passed under this section and section 173 shall be subject to revision by the Commissioner of the Division and the Board, but shall not be open to appeal to the civil Court.

174A. When the property of a judgment-debtor which is transferred or held under management under section 174 includes any sír-land of such debtor, he shall, until such property is restored to him, be treated as an ex-proprietary tenant of such sír-land under section 7.

Proprietor to be treated as ex-proprietary tenant of sír-land.

175. If in the opinion of the Collector of the District the recovery of the debt under section 174 is impossible, or if the sale of the property appear to him advisable on other grounds, he shall report, through the Commissioner of the Division, the case for orders to the Board.

Report of case to Board.

176. On the receipt of such report, the Board may make, or cause to be made, such further endeavours for the recovery of the debt under the provisions of section 174, as to it may seem practicable.

Procedure on receipt of report.

177. If it appear to the Board that the debt cannot be recovered under section 174, or if the sale of the property appear to it advisable on other grounds, it shall order the property to be sold, in which case the sale shall be made under the rules in force for the sale of land for arrears of land-revenue, but without prejudice to the incumbrances (if any) to which such property may be subject.

Power to order sale of property.

178. If, before the day fixed for any sale of any property under this Act, a third party appear before the Collector of the District or Assistant Collector, and claim a right or interest to or in any of the property, he shall examine such party or his agent, according to the law for the time being in force relative to the examination of witnesses,

Examination of third party claiming interest in property.

and, if he see sufficient reason for so doing, may stay the sale of such property.

Stay of sale.

179. The Collector of the District or Assistant Collector may adjudicate upon such claim, and make such order as he thinks fit between the claimant and the plaintiff and defendant in the original suit.

Adjudication of such claims.

In trying such claim, the Collector of the District or Assistant Collector shall be guided by the rules contained in this Act, so far as they may be applicable.

Rules applied.

180. If the claimant fail to establish his right to the property taken in execution, the Collector of the District or Assistant Collector may, at the time of disposing of the case, order him to pay to the judgment-creditor the costs of the proceedings on the claim, and also such sum as the Collector or Assistant Collector thinks sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

Compensation awardable against claimant failing to establish right.

181. (*a.*) No appeal shall lie from any order passed under section 179 or section 180 by the Collector of the District.

No appeal from order under section 179 or 180.

(*b.*) But the party against whom the same is passed may institute a suit in the civil Court to establish his right at any time within one year from the date of the order:

Right to sue in civil Court.

(*c.*) Provided that, if the order be for the sale of the property taken in execution, and the property is moveable the suit shall not be for the recovery of such property, but shall be for compensation from the judgment-creditor by whom it was brought to sale.

Proviso.

CHAPTER VIII.

APPEAL, REHEARING AND REVIEW.

(A).—From Decrees in Suits.

182. In suits under this Act, tried and decided by a Collector of a District or an Assistant Collector of the first class, his judgment shall be final.

Judgment of Collector of District or Assistant Collector of first class when final.

183. All decisions of the Assistant Collector of the second class in suits mentioned in section 93 shall be appealable to the Collector of the District, whose order thereon shall be final.

Appeal from decision of Assistant Collector of second class.

184. The petition of appeal shall be presented to the Collector of the District within thirty days from the date of the decree.

Time for presentation.

185. The Collector of the District may either dismiss the petition or may fix a day for hearing the appeal, and in that case he shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons.

Procedure on appeal.

If, on the day fixed for hearing the appeal, or any other day to which the hearing may be adjourned, the appellant does not appear in person or by an agent, the appeal may be dismissed for default.

If the appellant appears and the respondent does not appear in person or by an agent, the appeal may be heard *ex parte*.

186. If an appeal be dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Collector of the District to re-admit the appeal,

Re-admission of appeal.

and if it be proved to the satisfaction of the Collector of the District that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector of the District may re-admit the appeal.

187. After hearing the appeal, the Collector of the District shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits.

Judgment in appeal.

188. In suits in which the judgment of the Collector of the District or Assistant Collector is final, as provided in section 182, he may, upon the application of either party, if preferred within thirty days from the date of the decision, order the rehearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case, which the applicant had no knowledge of, or could not produce, at the time of trial.

Rehearing of suits not open to appeal.

189. Notwithstanding anything contained, in sections 182 and 183 an appeal shall lie to the District Judge from the decision of the Collector of the District or Assistant Collector of the first class, in all suits mentioned in section 93,

Appeal to District Judge.

in which the amount or value of the subject-matter exceeds one hundred rupees, or

in which the proprietary title to land has been determined between parties making conflicting claims thereto:

Provided that, where the amount or value of the subject-matter of the suits exceeds five thousand rupees, the appeal shall lie to the High Court.

Appeal to High Court.

190. The rules for the time being in force in regard to the time within which appeals from the decisions of civil Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the District Judge or High Court under this Act.

Rules as to time of presentation, &c., to apply.

191. The decisions of District Judges passed in regular appeal under this Act shall be open to special appeal to the High Court, and subject to the same rules, as the decisions of District Judges passed in regular appeal are open to special appeal under the Code of Civil Procedure and the Indian Limitation Act, 1877.

Special appeal to High Court from District Judge.

(B).—From Orders on Applications or relating to the Execution of Decrees.

(1) Assistant Collectors of the Second Class.

192. An appeal to the Collector of the District shall lie from all orders passed under this Act by an Assistant Collector of the second class.

Appeal from Assistant Collector of second class.

(2) Assistant Collectors of the First Class.

193. An appeal to the Commissioner of the Division shall lie from all orders passed by an Assistant Collector of the first class,

Appeal from orders of Assistant Collectors of first class on certain applications.

(*a*) on applications under section 99, where the amount or value of the subject-matter exceeds one hundred rupees,

(*b*) on applications under section 100.

194. An appeal to the Collector of the District shall lie from all other orders passed under this Act by an Assistant Collector of the first class, except—

Appeal from other orders of Assistant Collector of first class.

(*a*) orders on applications mentioned in section 98;

(*b*) orders on applications mentioned in section 99;

(*c*) orders passed in the course of a suit and relating to the trial thereof.

195. The orders of an Assistant Collector of the first class on the following applications shall be final, subject to revision by the Commissioner of the Division or the Board—

Final orders of Assistant Collector of first class.

(*a*) applications mentioned in section 98;

(*b*) applications mentioned in section 99 where the amount or value of the subject-matter does not exceed one hundred rupees.

(3) Collector of the District.

196. An appeal to the Commissioner of the Division shall lie from orders passed by the Collector of the District,

Appeal from certain orders of Collector of District.

(*a*) under section 99, when the amount or value of the subject-matter exceeds one hundred rupees,

(*b*) under section 100.

In all other cases orders under this Act passed by the Collector of the District shall be final, subject to revision by the Commissioner of the Division or the Board.

(4) Commissioner of the Division.

197. Save as provided by section 198, the orders of the Commissioner of the Division on appeals shall be final, subject to revision by the Board.

Finality of orders of Commissioner of Division.

198. An appeal from the decisions of the Commissioner of Division on appeals against orders passed by the Collector of the District or Assistant Collector on the applications mentioned in section 100 shall lie to the Board, except where the Commissioner of the Division dismisses the appeal.

Appeal to Board from his decisions on appeals against orders on applications mentioned in section 100.

In such case the provisions of section 199 shall apply.

199. The Board may at any time call for any case (other than a suit mentioned in section 189) which has come before any Commissioner of a Division, or any Court subordinate to him, and pass such orders thereon, consistent with this Act, as the Board thinks fit.

Power of Board to call for cases and pass orders thereon.

200. No appeal shall be brought to the Collector of the District after the expiration of thirty days, or to the Commissioner of the Division after the expiration of sixty days, or to the Board of Revenue after ninety days, from the date of the order complained of.

Time for appealing.

201. Any appeal under this Act may be admitted after the period of limitation prescribed therefor when the appellant satisfies the officer to whom he appeals that he had sufficient cause for not presenting the appeal within such period.

Admission of appeals after prescribed period.

No appeal shall lie against an order under this section admitting an appeal.

(5) Review.

201A. The Board may review and may rescind, alter or confirm any order made by itself, or by a single member, on the application of one of the parties to the case, if preferred within ninety days from the passing of the order.

Power of Board to review its orders.

201B. In the case of any application in which the order of the Commissioner, Collector of the District or Assistant Collector is final, as provided in sections 195, 196 and 197, such Commissioner, Collector or Assistant Collector, as the case may be, may, upon the petition of either party, if presented within thirty days from the date of the decision, review his order upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of or could not produce at the time of trial.

Reviewing of applications not open to appeal.

CHAPTER IX.

MISCELLANEOUS.

202. In computing the period of limitation prescribed for any suit under this Act, the day on which the right to sue accrued shall be excluded.

Time to be excluded in computing limitation period.

In computing the period of limitation prescribed for any appeal under this Act, the day on which the judgment or order complained of was pronounced, and the time requisite for obtaining a copy of the decree or order appealed against, shall be excluded.

203. Whenever a Court is closed on the last day of any period provided in this Act for the presentation of any memorandum of appeal, or for the deposit or payment of any money in or into court, the day on which the Court re-opens shall be deemed to be such last day.

Rule as to last day for presentation or deposit, when Court is closed on such day.

204. (*a.*) If in any suit instituted, or on any application made, under this Act, it appears to the presiding officer that any question in issue involving a point of law is more proper for the decision of a civil Court, such officer, if a Collector of a District, or the Collector of the District on the representation of such officer, may cause a case to be stated for the opinion of the District Judge, who shall hear the case in such manner as nearly as may be as is prescribed for the hearing of cases by the High Court by section 619 of the Code of Civil Procedure.

Power to state case involving point of law for opinion of District Judge.

(*b.*) If the District Judge finds that the case is insufficiently stated, he may return it to the Collector of the District for amendment.

(*c.*) Subject to any limits of value or time prescribed by law for cases falling under the Code of Civil Procedure, an appeal shall lie from the judgment of the District Judge to the High Court.

(*d.*) The District Judge shall return the case with the opinion of the civil Court to the Collector of the District, and the revenue Courts shall decide the suit or application in accordance with such opinion.

(*e.*) The costs attending such case shall be dealt with as costs in the suit or on the application in the revenue Court.

205. (*a.*) If in any suit instituted, or on any appeal presented, in a civil or revenue Court, the Judge or presiding officer doubts whether he is precluded by this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.

Power to refer to High Court questions as to jurisdiction.

(*b.*) On any such reference being made, the High Court may order the Judge or presiding officer, either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

(*c.*) The order of the High Court on any such reference shall be final, and shall not be questioned by the same parties in the same suit.

206. In all suits instituted in any civil or revenue Court, in which an appeal lies to the District Judge or High Court, an objection that the suit was instituted in the wrong Court shall not be entertained by the appellate Court, unless such objection was taken in the Court of first instance; but the appellate Court shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where objection that suit was instituted in wrong Court was not taken in Court of first instance.

207. If in any such suit such objection was taken in the Court of first instance, but the appellate Court has before it all the materials necessary for the determination of the suit, it shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where such objection was taken in Court of first instance.

208. If in any such suit the appellate Court has not before it the materials necessary for the determination of the suit, it shall proceed under the provisions of the Code of Civil Procedure relating to appeals; but if it remands the suit, or frames and refers issues for trial, or requires additional evidence to be taken by the Court of first instance, it may direct its order either to the Court in which the suit was instituted, or to any other Court competent to entertain the suit,

Procedure where, in such cases, the appellate Court has not materials for determining the suit.

and the objection that the order of a subordinate appellate Court has been directed to a Court which was not competent to entertain the suit shall not be taken on special appeal.

208A. If, in any suit or application pending before a Revenue Court exercising original appellate or revisional jurisdiction under this Act, it appears to such Court that any question in issue is more proper for decision by a civil Court, such Revenue Court may, by order in writing, require any party to such suit or application to institute, within such time as it may appoint in this behalf, a suit in the civil Court with a view to obtaining a decision of such question; and, if he fails to comply with such requisition, shall decide such question against him.

Power to refer party to civil Court.

If he institutes such suit, the Revenue Court shall dispose of the suit or application pending before it in accordance with the final decision of the civil Court of first instance or appeal (as the case may be) upon such question.

Suits by co-sharer against lambardár for share of profits.

209. In any suit brought by a co-sharer against a lambardár for a share of the profits, the Court may award to the plaintiff not only a share of the profits actually collected, but also a sum equal to the plaintiff's share in the profits which, through gross negligence or misconduct, the lambardár has omitted to collect.

Tenant's power to implead persons claiming through landholder.

210. In any application made by a tenant against a landholder to recover possession of a holding, the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the landholder.

Landholder's power to implead persons claiming through tenant.

In any suit instituted, or application made, by a landholder to eject a tenant the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the tenant.

Power of Local Government to make rules.

211. The Local Government may from time to time make rules consistent with this Act—

(*a*) for the guidance of officers in determining, under sections 13, 14, 15, 17, 18 and 20, the rent payable by tenants,

(*b*) for the guidance of officers assessing rent under section 80,

(*c*) as to the dates on which instalments of rent shall fall due,

(*d*) as to the procedure to be followed on all applications under section 95.

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

Power of Board to make rules.

The Board, with the previous sanction of the Local Government, may from time to time make rules, consistent with the provisions herein contained, for the guidance of all persons in matters connected with the enforcement of this Act.

Instalments when to be deemed in arrear.

212. When the Local Government has made a rule fixing the date on which any instalment of rent shall fall due, no such instalment shall, for the purposes of this Act, be deemed to be in arrear unless it remains unpaid after the date fixed by such rule.

THE FIRST SCHEDULE.

FORM A. (*See Section 51.*)

I, *A. B.*, of , solemnly declare that I did personally [*or* by my agent *C. D.*], on the day of , tender payment to *E. F.* of the sum of Rs. as and for the whole amount due from me on account of rent from the month of to the month of both inclusive. I further declare that the said *E. F.* refused to accept the sum so tendered, and to give a receipt in full for the same, 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 I owe the said *E. F.*, and I hereby apply for leave to pay the same accordingly.

FORM B. (*See Section 52.*)

Court of the Collector of , dated the day of

To *E. F.* &c.

WITH reference to the written declaration of *A. B.*, 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 to your duly authorized agent, on application.

[This is to be written on a copy of the declaration in Form A made by the person paying the money into Court.]

FORM C. (*See Section 69.*)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of Commissioner for sale of distrained property.

A. B., Distrainer.

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

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

Dated this day of 188 .

FORM D. (*See Section 114.*)

FORM OF SUMMONS TO DEFENDANT.

No. (*of suit*) dated

In the Court of

A. B., Plaintiff.

[*Name, description and address of plaintiff.*]

C. D., Defendant.

[*Name, description and address of Defendant.*]

WHEREAS the said *A. B.* has brought a claim against you in this Court for you are hereby required to appear in person in this Court on the day of [*if not specially required to appear in person, state,* "in person, or by an agent who has personal knowledge of the subject or who shall be accompanied by a person who has such knowledge"] to answer the above-named plaintiff, and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by the plaintiff*] which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your

defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

FORM E. (*See section 119.*)

FORM OF WARRANT OF ARREST.

No. (*of suit*) dated

In the Court of

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

To the Názir of the Court of the Collector of

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

Dated this day of 188 .

FORM F. (*See section 119.*)

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of

A. B., Plaintiff.

[*Name, description and address of plaintiff.*]

C. D., Defendant.

[*Name, description and address of defendant.*]

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

FORM G. (*See section 121.*)

FORM OF SECURITY-BOND FOR APPEARANCE OF DEFENDANT.

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

FORM H. (*See section 156.*)

WRIT OF EXECUTION AGAINST THE PERSON.

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

To the Názir of the Court of the Collector of

WHEREAS the said *C. D.* was directed by a decree of this Court, under date the day of 188 , to pay to *A. B.* the sum of and for costs of suit, amounting to , and whereas the said *C. D.* has omitted to pay the same, you are hereby commanded to apprehend the said *C. D.*, and to bring him with all convenient speed before this Court to be dealt with according to law.

FORM I. (*See section 156.*)

WRIT OF EXECUTION AGAINST THE EFFECTS.

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

To the Názir of the Court of the Collector of

WHEREAS *C. D.* was directed by a decree of this Court, under date the day of 188 , to pay to *A. B.* the sum of and for costs of suit, amounting to , and whereas the said *C. D.* has omitted to pay the same, you are hereby commanded to levy the said sum of , and the sum of for costs of executing this process, by seizure and sale of such moveable property of the said *C. D.* as (is described in the list annexed and) [*if no list is furnished, these words to be omitted*] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said *C. D.*, on some convenient day, not being less than ten nor more than fifteen days from the day of seizure, unless the amount leviable as aforesaid shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

THE SECOND SCHEDULE.

(*See section 1.*)

TERRITORIES EXEMPTED, IN THE FIRST INSTANCE, FROM THE OPERATION OF THE ACT.

I. The province of Kumaon and Garhwál.
II. The Tarai Parganas, comprising—Bázpúr, Káshípúr, Jaspúr, Rudarpúr, Gadarpúr, Kilpúrí, Nának-Mattha, and Bilheri.
III. The portion of the Mirzápúr District lying to the South of the Kaimor Range.
IV. The Family Domains of the Mahárájá of Benares comprising the following parganas:—
Bhadohi and Kera Mangror in the Mirzapur District,
Kaswár Rájá in the Benares District.
V. The tract of country known as Jaunsar Báwar in the Dehra Dún District.

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 11th March, 1881, and is hereby promulgated for general information :—

ACT NO. XIII OF 1881.

An Act to provide for the better government of Fort William.

WHEREAS it is expedient to give power to make rules for the better government of Fort William in Bengal and to provide for the establishment of a Court within the said Fort for the trial of persons charged with breaches of such rules; It is hereby enacted as follows :—

Preamble.

Short title.

Commencement.

1. This Act may be called "The Fort William Act, 1881;" and it shall come into force on the first day of April, 1881.

But nothing herein contained shall be deemed to confer jurisdiction over any persons (other than artificers, labourers, sutlers and followers) to whom the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, 1869, is or are applicable.

"The Fort."

2. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, define, for the purposes of this Act, the limits of Fort William in Bengal; and in this Act the expression "the Fort" means the area so defined.

Commander-in-Chief may make rules.

3. The Commander-in-Chief in India may, from time to time, with the sanction of the Governor General in Council, make rules, to be in force within the Fort, in regard to the matters specified in the schedule hereto annexed, and other matters of a like nature, and may by such rules prescribe, as penalties for the infringement thereof, fine which may extend to fifty rupees, or imprisonment for a term which may extend to four days, or both.

When a sentence of fine is passed under any such rule, the term for which the Court directs the offender to be imprisoned in default of payment of such fine may extend to, and shall not exceed, four days.

When any rule is made under this section, a copy thereof, in English and such other languages as the Governor General in Council may from time to time direct, shall be exhibited in such conspicuous places within the Fort as the officer commanding the Fort may from time to time direct.

Governor General in Council may invest officer with power to try breaches of rules.

4. The Governor General in Council may invest any commissioned officer in Her Majesty's Army with power to try persons charged with any infringement of the rules made under section three.

The officer so invested is hereinafter called the Fort Magistrate.

Procedure to be followed.

5. In all cases under this Act, the Fort Magistrate shall, except as herein otherwise provided, exercise within the Fort the powers, and, as nearly as may be, follow the procedure, conferred on, and prescribed for, a Presidency Magistrate by the Presidency Magistrates Act, 1877; and, subject to the power conferred by the High Courts Criminal Procedure Act, 1875, section [illegible], every finding, sentence or order of such Magistrate under this Act shall be final.

Power to arrest without warrant.

6. Any Police-officer, or any other person empowered in this behalf by the Governor General in Council, by name or as a member of a specified class, may arrest without warrant any person who in his sight commits an offence punishable under this Act.

Power to Police-officer to release on bail.

Every person so arrested shall be taken to the police-station within the Fort, and shall be detained there until he gives to the Police-officer in charge of such station a bond, with or without sureties, as such officer may require, for a sum not exceeding one hundred rupees, to appear before the Fort Magistrate at a time to be specified in such bond, or until he can be brought before such Magistrate.

Jurisdiction of Presidency Magistrates and prosecutions under other laws saved.

7. Nothing in this Act or in any rule made hereunder shall affect the jurisdiction of the Magistrates appointed under the Presidency Magistrates Act, 1877, or shall prevent any person from being prosecuted under any other law for any offence punishable under this Act, or from being liable to any other punishment than is provided for such offence by this Act: Provided that no person shall be punished twice for the same offence.

Limitation of time for prosecutions under Act.

8. No prosecution for any offence under this Act shall be commenced after the expiration of three months next after such offence has been committed.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 11th March, 1881, and is hereby promulgated for general information :—

ACT No. XIV OF 1881.

An Act to amend Bengal Regulation VII of 1828.

Preamble.

WHEREAS it is expedient to amend Bengal Regulation VII of 1828 (*for amending the Provisions of Regulation XV of 1795, and for defining the Authority of the Rajah of Benares in the Mahâls therein referred to*) in manner hereinafter appearing; It is hereby enacted as follows :—

Short title. Commencement of Act.

1. This Act may be called "The Benares Family Domains Act, 1881": And it shall come into force on such day as the Lieutenant-Governor of the North-Western Provinces may, by notification in the official Gazette, appoint in this behalf.

Repeal of certain portions of Bengal Regulation VII of 1828.

2. The following portions of Bengal Regulation VII of 1828 shall be repealed, namely :—

(*a*) in section 5, the words and figures "under the rules contained in Regulation XLI, 1795";

(*b*) in section 14, the words "under the Regulations," in both places in which they occur;

(*c*) in section 19, the words "before the Court of circuit";

(*d*) in section 20, the proviso.

New section substituted for section 3 of same Regulation. Superintendence of mahâls vested in Commissioner.

3. In the same Regulation, for section 3, the following shall be substituted, namely :—

"3. The superintendence of the said mahâls shall be vested in the Commissioner of the Benares Division, hereinafter called 'the Superintendent.'

"The Lieutenant-Governor of the North-Western Provinces may, from time to time, appoint a Deputy Superintendent of the said mahâls, and confer upon him all or any of the powers of the Superintendent, to be exercised by him subject to the general control of the Superintendent."

Amendment of same Regulation, section 7.

4. In the same Regulation, section 7, for the last twenty-two words, the following shall be substituted, namely :—

"The orders thus passed by the Superintendent shall be subject to appeal to, and revision by, the Board of Revenue, whose order thereon shall be final, unless altered or set aside by the said Lieutenant-Governor."

Amendment of same Regulation, section 9.

5. In the same Regulation, section 9, for the words "the Regulations at present in force within the Province of Benares" the words "the enactments for the time being in force in the North-Western Provinces" shall be substituted, and after the word "applicable" the words "and the Local Government with the concurrence of the Mahárájá may direct" shall be inserted.

Clause added to section 10 of same Regulation.

6. To section 10 of the same Regulation the following clause shall be added, namely :—

"The Mahárájá may delegate to one or more of his officers the exercise of all or any of the powers vested in him under this section in the whole or any part of the said mahâls."

Amendment of same Regulation, section 11.

7. In the same Regulation, section 11, for the words and figures "Regulation XI, 1822," the words "the enactments for the time being in force in the North-Western Provinces" shall be substituted.

Amendment of same Regulation, section 12.

8. In the same Regulation, section 12, for the words "Boards of Revenue" the words "Commissioners of Divisions and the Board of Revenue" shall be substituted;

and, for the words "towards the Board" the words "towards the Commissioner" shall be substituted.

Amendment of same Regulation, section 13.

9. In the same Regulation, section 13, for the words "Governor General in Council" the words "Board of Revenue" shall be substituted.

Amendment of, and addition to, same Regulation, section 16.

10. In the same Regulation, section 16, for the words "a Native Commissioner shall be maintained by the Rajah in each of the pergunnahs referred to in Regulation XV, 1795," the following shall be substituted, namely :—"A Native Commissioner, or two or three Native Commissioners, as the said Lieutenant-Governor may, from time to time, direct, shall be maintained by the Mahárájá."

And to the same section the following shall be added, namely :—

"The local limits of the jurisdiction of the Native Commissioners shall be determined by the Mahárájá, and may be altered by him from time to time."

11. In the same Regulation, section 21, for the words and figures "contained in Regulation XXIII of 1814" to the end of the section, the following shall be substituted, namely :—"prescribed by the said Lieutenant-Governor under section 22 of this Regulation."

Amendment of same Regulation, section 21.

12. For sections 22 to 26, both inclusive, of the same Regulation, the following sections shall be substituted, that is to say :—

Sections substituted for sections 22 to 26 of same Regulation.

"22. The said Lieutenant-Governor may, from time to time, make rules consistent with this Regulation—

Power to make rules.

"(*a*) to regulate the procedure and powers of the Native Commissioners, and to determine the cases in which, the mode in which, and the authority to or by which, the orders and decisions of such Commissioners shall be subject to appeal or revision, and

"(*b*) to regulate, in matters not hereinbefore provided for, the administration of the Family Domains in so far as it is entrusted to the Mahárájá;

"such rules shall, when published in the local Gazette, have the force of law:

"Provided that no such rule shall be so published until the opinion of the Mahárájá thereon has been taken and considered by the Lieutenant-Governor.

"In matters not otherwise provided for by the rules made under clause (*a*), the Code of Civil Procedure shall apply.

"23. If, in any suit instituted or appeal presented under this Regulation in any Court, the Judge or presiding officer doubts whether he has jurisdiction, he may refer the matter to the Board of Revenue; and, on any such reference being made, the said Board may order the Judge or presiding officer either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

Procedure in case of doubt as to Judge's jurisdiction.

"The order of the said Board on any such reference shall be final.

"24. Except as provided by or under this Regulation, or any other enactment for the time being in force,

Operation of general Acts.

"(*a*) the administration of the Family Domains, in so far as it is entrusted to the Mahárájá, shall be regulated by the principles and spirit of the enactments for the time being in force in the North-Western Provinces, and

"(*b*) the administration of the said Domains, in so far as it has not been so entrusted, shall be regulated by those enactments.

"25. In this Regulation, unless there is something repugnant in the subject or context,—

Interpretation-clause.

"'Board of Revenue' means the Board of Revenue of the North-Western Provinces, or such officer or officers as may hereafter be lawfully appointed to exercise, within the Province of Benares, the powers of such Board.

'Board of Revenue.'

"'Regulations' includes Acts for the time being in force in the North-Western Provinces."

'Regulations.'

13. All orders heretofore passed by the Governor General in Council, or the Lieutenant-Governor of the North-Western Provinces, or any other authority, regarding revisions of settlement or other matters connected with the revenue-administration of the tracts of territory mentioned in the preamble to Bengal Regulation VII of 1828, shall be deemed to have been passed in accordance with law; and no order or decision purporting to have been passed by any civil or revenue authority under the provisions of that Regulation shall be called in question in any Court.

Validation of past orders, &c.

14. In the Scheduled Districts Act, 1874, first schedule, Part IV, and in the Laws Local Extent Act, 1874, sixth schedule, Part IV, the following shall be repealed, that is to say :—

Parts of Acts XIV and XV of 1874 repealed.

"V. The Family Domains of the Mahárájá of Benares comprising the following parganas :—

"Bhadohi and Kheyra Mángror in the Mirzapur District.

"Kaswá Rájá in the Benares District."

15. In the Laws Local Extent Act, 1874, section 8, after clause (*j*), the following shall be inserted, namely :—

Clause added to Act XV of 1874, s. 8.

"(*jj*) extend to Pargana Bhadohi or Pargana Kera Mangror in the Mirzapur District, or to Pargana Kaswár Rájá in the Benares District, any law not now in force therein."

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 19, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 14th March 1881, and is hereby promulgated for general information :—

ACT NO. XII OF 1881.

THE NORTH-WESTERN PROVINCES RENT ACT, 1881.

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FIRST SCHEDULE.—FORMS.
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An Act to amend the Law relating to the recovery of Rent in the North-Western Provinces.

WHEREAS it is expedient to amend the law relating to the recovery of Rent in the North-Western Provinces of the Presidency of Fort William in Bengal; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The North-Western Provinces Rent Act, 1881:"

It extends in the first instance to the territories for the time being under the government of the Lieutenant-Governor of the North-Western Provinces, except those specified in the second schedule hereto annexed. But the Local Government may, by notification in the official Gazette, extend the whole or any part of this Act to all or any of the territories so excepted, and when any part of the North-Western Provinces Rent Act, 1873, has been extended to any such territory, such part shall be repealed therein and the corresponding part of this Act shall extend thereto.

Local extent.

Save as provided by sections 171 and 172, nothing herein contained applies to land for the the time being occupied by dwelling-houses or manufactories, or appurtenant thereto, so long as such land is not let to agricultural tenants.

This Act shall come into force on the first day of April, 1881.

Commencement.

2. The North-Western Provinces Rent Act, 1873, is hereby repealed. But such repeal shall not legalize any practice which, immediately before the passing of that Act, was unlawful.

Act No. XVIII of 1873 repealed.

All rules and appointments made, notifications and proclamations issued, authorities and powers conferred, leases granted, rents fixed, rights acquired, liabilities incurred and places appointed under that Act shall, so far as may be, be deemed to have been made, issued, conferred, granted, fixed, acquired, incurred and appointed hereunder.

Rules, &c., under repealed Act.

Illustration (*a*) to the Indian Penal Code, section 19, and Act No. XI of 1865, section 52, shall be read as if, for "Act X of 1859," the words and figures, "the North-Western Provinces Rent Act, 1881," were substituted. And in all Acts passed after the said North-Western Provinces Rent Act, 1873, all references to that Act shall be read as if made to this Act.

Acts amended.

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

Interpretation-clause.

'Mahál:' (1.) 'Mahál' means—

(*a*) any local area held under a separate engagement for the payment of land-revenue, and for which a separate record-of-rights has been framed;

(*b*) any local area of which the revenue has been assigned or redeemed, and for which a separate record-of-rights has been framed:

'Tenant:' (1A.) 'Tenant' includes a thékadár and a katkanadár:

'Rent:' (2.) 'Rent' means whatever is to be paid, delivered or rendered by a tenant on account of his holding, use or occupation of land:

'Landholder:' (3.) 'Landholder' means the person to whom a tenant is liable to pay rent:

'Sír-land:' (4.) 'Sír-land' means—

(*a*) land recorded as sír at the last settlement or revision of settlement of the district in which it is situate, and continuously so recorded since;

(*b*) land continuously cultivated for twelve years by the proprietor himself with his own stock or by his servants, or by hired labour;

(*c*) land recognized by village-custom as the special holding of a co-sharer, or treated as such in the distribution of profits or charges among the co-sharers:

'Collector of a District:' (5.) 'Collector of a District' means the chief officer in charge of the Revenue Administration of a District:

'Commissioner of a Division:' (6.) 'Commissioner of a Division' means the chief officer in charge of the Revenue Administration of a Division:

'Board:' (7.) 'Board' means the Board of Revenue for the North-Western Provinces:

'Civil Jail:' (8.) 'Civil Jail' means the civil jail of the District, and includes any place appointed by the Local Government for the confinement of prisoners under sentence of any Court constituted under this Act.

CHAPTER II.

RIGHTS AND LIABILITIES OF LANDHOLDERS AND TENANTS.

Intermediate holders of land at rates unchanged since permanent-settlement. **4.** When any permanent and transferable interest in land in a district or a portion of a district which has been permanently settled has been held otherwise than under a terminable lease by any person intermediate between the proprietor of the mahál and the occupants, and by the predecessors in interest of such person, from the time of the permanent-settlement, at the same rate of rent, such person shall have a right to hold such interest at that rate.

Tenants at fixed rates. **5.** When any land in a district or portion of a district which is permanently settled has been held by a tenant and his predecessors in interest, from the time of the permanent settlement, at the same rate of rent, such tenant shall have a right of occupancy at that rate.

A tenant having such right is hereinafter called a "tenant at a fixed rate."

Presumption when 20 years' holding at fixed rate is proved. **6.** When, in any suit to which the provisions of section 4 or section 5 apply, it is proved that the land has for a period of twenty years next before the institution of the suit been held by the present holder and his predecessors in interest at the same rate of rent, it shall be presumed, until the contrary is proved, that it has been held at such rate from the time of the permanent settlement.

Ex-proprietary tenants. **7.** Every person who may hereafter lose or part with his proprietary rights in any mahál shall have a right of occupancy in the land held by him as sír in such mahál at the date of such loss or parting, at a rent which shall be four annas in the rupee less than the prevailing rate payable by tenants-at-will for land of similar quality and with similar advantages.

Persons having such rights of occupancy shall be called "ex-proprietary tenants," and shall have all the rights of occupancy-tenants.

If there are two or more sharers in any sír-land and one of them becomes an ex-proprietary tenant, the share which previously belonged to such ex-proprietary tenant shall, on his application or on the application of the person entitled to receive the rent, be divided off by the Collector, and the rights of the ex-proprietary tenant shall be limited to the land comprised in such share.

Occupancy-tenants. **8.** Every tenant who has actually occupied or cultivated land continuously for twelve years has a right of occupancy in the land so occupied or cultivated by him.

Such tenants shall be called "occupancy-tenants."

The occupation or cultivating of the father or other person from whom the tenant inherits, shall be deemed to be the occupation or cultivating of the tenant within the meaning of this section:

Tenants barred from right of occupancy. Provided that no tenant shall acquire, under this section, a right of occupancy—

(*a*) in land which he holds from an occupancy-tenant, or from an ex-proprietary tenant, or from a tenant at fixed rates;

(*b*) in sír-land;

(*c*) in land held by him in lieu of wages.

Time excluded from reckoning period necessary for acquiring right of occupancy. Provided also that, when a tenant actually occupies or cultivates land under a written lease, without having a right of occupancy in such land, the period of twelve years necessary for acquiring a right of occupancy therein by him or any one claiming under him shall begin on the expiration of the term of such lease. If during the currency of such lease he ceases to occupy the land comprised therein, and sublets it to another, no right of occupancy in such land shall be acquired by the sub-lessee during the currency of the lease.

Rights under sections 7 and 8 when transferable. **9.** The right of tenants at fixed rates may devolve by succession or be transferred.

No other right of occupancy shall be transferable in execution of a decree or otherwise than by voluntary transfer between persons in favour of whom as co-sharers such right originally arose or who have become by succession co-sharers therein.

When any person entitled to such last-mentioned right dies, the right shall devolve as if it were land: Provided that no collateral relative of the deceased who did not then share in the cultivation of his holding shall be entitled to inherit under this clause.

Determination of class of tenure of tenant. **10.** On the application of any tenant to have his class of tenure determined, the Collector of the District or Assistant Collector shall determine the class to which he belongs, namely—

whether he is a tenant at fixed rates,

or an ex-proprietary tenant,

or an occupancy-tenant,

or whether he is a tenant without a right of occupancy.

Bar to enhancement of rent of tenants at fixed rates. **11.** The rent paid by tenants at fixed rates shall not be liable to enhancement, except as provided by section 18.

Enhancement in case of ex-proprietary and occupancy-tenants. **12.** The rent paid by ex-proprietary or occupancy-tenants shall not be liable to enhancement except—

(*a*) by a written agreement registered under the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or recorded before the kánúngo: or

(*b*) by order of a Settlement-officer passed under the law for the time being in force: or

(*c*) by order under this Act.

Grounds of enhancing rent of occupancy-tenants which has not been fixed by order. **13** (*a*). Where the rent of any occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

(*b*) or where the rent has been fixed by any such order, but the term for which it has been fixed has expired,

(*c*) or where ten years from the date on which an order fixing the rent has taken effect have expired,

(*d*) or where by order of the Local Government the assessment of the district has been revised before confirmation,

(*e*) or where the period of settlement of the district has come to an end,

the landholder may apply to enhance the rent of such tenant on one of the following grounds and on no others:—

(*f*) that the rate of the rent paid by such tenant is below the prevailing rate payable by the same class of tenants for land of similar quality with similar advantages;

(*g*) that the value of the produce has, or the productive powers of the land have, been increased otherwise than by the agency or at the expense of the tenant;

(*h*) that the quantity of land held by the tenant has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

Enhancement of rent of ex-proprietary tenants which has not been fixed by order. **14** (*a*). Where the rent of any ex-proprietary tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*) has occurred,

the landholder may apply to enhance or determine the rent of such tenant as if he were an occupancy-tenant: Provided that his rent shall be four annas in the rupee below the prevailing rate for land of a similar quality with similar advantages held by tenants-at-will.

Selection of land for comparison. (*b*). Whenever the district or tahsíl, or other local area in which such land is situated, has been divided by the Settlement-officer into circles of like capacity and soil, the land of similar quality, with similar advantages, shall, for the purposes of this section and section 13, be selected from the same circle.

(*c*). When the Settlement-officer has not so divided the district or other local area as aforesaid, the land regarding which the application has been made shall be compared with land of similar quality and with similar advantages, in the same tahsíl or in a tahsíl immediately adjacent.

Abatement in like cases. **15.** Where the rent of any ex-proprietary tenant or occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*) has occurred,

the tenant may apply for an abatement of his rent on one of the following grounds, and on no others:—

(*a*) that the area of the land held by him has been diminished by diluvion or otherwise:

(*b*) that the value of the produce has, or the productive powers of such land have, been decreased by any cause beyond his power.

Time of enhancement or abatement where rent of ex-proprietary or occupancy-tenant has been fixed by order under this Act. **16.** Where the rent of any ex-proprietary or occupancy-tenant has been fixed by an order under this Act, such rent shall not be liable to be enhanced or abated until the occurrence of any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*), whichever first occurs.

Grounds of enhancement and abatement where his rent has been fixed by order of a Settlement-officer or under this Act. **17.** Notwithstanding anything contained in section 16 where the rent of any ex-proprietary or occupancy-tenant has been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act, the landholder may apply to enhance the rent of such tenant during the currency of the term for which the rent has been so fixed, on one of the following grounds, and on no others:—

(*a*) that the area of the tenants holding has been increased by alluvion or otherwise:

(*b*) that the productive powers of the land held by the tenant have, since the date of the order, been increased otherwise than by the agency or at the expense of the tenant:

And the tenant may apply for abatement of his rent on one of the following grounds, and on no others:—

(*c*) that the area of the land held by him has been diminished by diluvion or otherwise;

(*d*) that the productive powers of such land have been decreased by any cause beyond his control.

18. In the case of a tenant at fixed rates, the landholder may apply to enhance his rent on the ground that the area of the land in his holding has been increased by alluvion or otherwise,

Grounds of enhancement or abatement of rent of tenant at fixed rates.

and the tenant may apply for abatement of his rent on the ground that the area of the land in his holding has been diminished by diluvion or otherwise.

19. Applications for enhancement or abatement of rent must be made on or before the thirty-first day of August next before the year commencing on the first day of July from which the rent is to be enhanced or abated,

Day before which applications for enhancement or abatement must be made.

and every order for enhancement or abatement shall take effect from the first day of July next following the date of such order, unless for some reason, to be stated in writing, the Court thinks fit to order otherwise.

Orders when to take effect.

20. In determining, under this Chapter, the rate of rent payable by any tenant, his caste shall not be taken into consideration, unless it is proved that, by local custom, caste is taken into account in determining such rate;

Consideration of caste and class of tenant in determining rate of his rent.

and whenever it is found that, by local custom or practice, any class of persons, by reason of their having formerly been proprietors of the soil or otherwise, hold land at favourable rates of rent, the rate shall be determined in accordance with such custom or practice.

21. No tenant-at-will of land shall be liable to pay rent in excess of the rent (if any) payable by him in the previous year ending on the thirtieth day of June, unless the landholder and tenant have agreed as to the rent to be paid to the former by the latter, and such agreement has been recorded by the kánúngo of the pargana in which such land is situate.

Tenants-at-will.

22. Notwithstanding anything hereinbefore contained, when the rent of any ex-proprietary or occupancy-tenant has been fixed by agreement between the parties, such rent shall not be liable to enhancement or abatement for such term as may be agreed on.

Rent of ex-proprietary or occupancy-tenant fixed by agreement.

22A. When any land is held of a landholder by a tenant, such landholder or tenant may, in the absence of a written contract to the contrary, apply to the Collector of the District to have such land surveyed. The Collector, on receiving such application, may estimate the cost of such survey, and, by order in writing, require the applicant to deposit the amount of such estimate.

Applications to survey land.

If the applicant deposits such amount within fifteen days from the date of the order, the Collector of the District shall issue a notice to the other party or parties to the tenancy to show cause, at a time and place specified in such notice, why the survey should not be made; and, if no such cause is so shewn, may, by an order in writing, direct the survey to be made by such person and at such time as he thinks fit.

A copy of such order shall be served on all the parties to the tenancy; and, if any party fails to attend at the appointed time, it shall not thereafter be open to him to question the correctness of the survey made in his absence.

If any party, on being called upon to show cause as aforesaid, makes any objection to the survey and such objection is overruled, he shall be liable to pay the costs (if any) occasioned by such objection.

Nothing in this section shall affect any power conferred by law to compel the attendance of any person at a survey.

23. Whenever for any cause the Local Government remits or suspends for any period the payment of the whole or any part of the revenue payable in respect of any land, any officer empowered by the Local Government in this behalf may, subject to such rules as to appeal, confirmation or otherwise as may, from time to time, be prescribed by the Board, order that the rent of such land shall be remitted, or suspended for the period of such suspension of payment of revenue, as the case may be, to an amount which shall be equal to double the amount of the revenue of which the payment has been so remitted or suspended, or shall bear the same proportion to the whole of the rent payable in respect of the land as the revenue of which the payment has been so remitted or suspended bears to the whole of the revenue payable in respect of such land;

Power to remit or suspend payment of rent when payment of revenue remitted or suspended.

and, subject to the same rules, the landholder shall be bound by such order.

(*A*).—*Leases.*

24. Every tenant is entitled to receive from the landholder, and may at any time during the continuance of his holding, apply for a lease containing the following particulars:—

Contents of lease to which every tenant is entitled.

(*a*) the quantity of land held by him, and, where the fields have been numbered in a Government survey, the number of each field:

(*b*) the amount of annual rent payable for such land:

(*c*) the instalments in which, and the dates on which, such rent is to be paid:

(*d*) any special conditions of the lease:

(*e*) if the rent is payable in kind, or is calculated on a valuation of the produce, the proportion of produce to be delivered, the mode of valuation, and the time, manner and place of delivery.

25. Tenants at fixed rates are entitled to receive leases at such rates.

Leases to which tenants at fixed rates are entitled.

26. Ex-proprietary and occupancy-tenants are entitled to receive leases at the rates determined in accordance with the law for the time being in force, or, where no rates have been so determined, at the rates actually paid by them when they demand such leases.

Leases to which ex-proprietary and occupancy-tenants are entitled.

27. All other tenants are entitled to leases only on such terms as may be agreed upon between them and the landholders.

Leases to which other tenants are entitled.

28. Every landholder who grants a lease is entitled to receive a reciprocal engagement from the tenant, executed by the tenant, and conformable with the terms of the lease.

Landholder granting lease entitled to reciprocal engagement.

The tender to any tenant of a lease, such as he is entitled to receive, shall entitle the landholder to receive a reciprocal engagement from such tenant.

29. Notwithstanding anything contained in section 22, when any lease is granted, or any agreement is entered into, by any landholder under engagement with Government for his land, fixing the rent of land for any period exceeding the term of such engagement, and such term expires, such lease or agreement shall,

Lease for period exceeding term of landholder's engagement.

(*a*) when, on the expiration of such term, the revenue payable in respect of such land is enhanced—be voidable at the option of the landlord, unless the tenant agrees to pay such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the landlord, determine to be fair and reasonable; and

(*b*) when such land-revenue is on the expiration of such term reduced—be voidable at the option of the tenant, unless the landlord agrees to accept such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the tenant, determine to be fair and reasonable.

30. (*a*) And whereas all grants (whether in writing or otherwise) for holding land exempt from the payment of rent which have been made since the first day of December, 1790, by any authority other than that of the Governor General in Council, were declared by Bengal Regulation XIX of 1793, section 10, to be null and void, and like provisions have been by divers Regulations applied to the several parts of the territories to which this Act extends, and the said Regulation XIX of 1793 also provided that no length of possession should be considered to give validity to any such grant, either with regard to the property in the soil or the rents of it, it is hereby further enacted as follows:—

Resumption of rent-free grants.

(*b*) Applications by the proprietor to resume such grants or to assess rent on the land, shall be made to the Collector of the District or Assistant Collector, and, subject to rules to be made by the Local Government, shall be dealt with as other applications under this Act.

Applications to resume.

(*c*) Grants of land held under a written instrument, by which the grantor expressly agrees that the grant shall not be resumed, shall be held valid as against him (but not as against his representatives after his death) during the continuance of the settlement of the district in which the land is situate, which is current at the date of the grant,

Validity of grants which grantor has expressly agreed not to resume.

(*d*) Where any land, having been for the fifty years next before the twenty-second day of December, 1873, held rent-free and by at least two successors to the original grantee, was so held on that day, such holding shall be deemed to have conferred on the holder a proprietary right.

When rent-free tenure confers proprietary right.

(*e*) Nothing in the Indian Limitation Act, 1877, shall bar the right to make an application under this Act to assess to rent land held rent-free.

(*f*) Nothing in this section shall apply to either of the following cases:—

(1) Where land was, previously to the passing of the North-Western Provinces Rent Act, 1873, held rent-free under a judicial decision:

(2) Where, previously to the passing of that Act, land held rent-free had been purchased for a valuable consideration and resumption thereof had been barred under Act No. X of 1859, section 28, or under the Indian Limitation Act, 1871, schedule II, No. 130.

(*B*).—*Relinquishment and Ejectment.*

31. Every tenant not holding under a lease shall continue liable for the rent of the land in his holding for the ensuing year, unless on or before the first day of May in any year he gives notice in writing to the landholder, or his recognized agent, of his desire to relinquish such land on the thirtieth day of June next ensuing, and relinquishes it accordingly; or unless it is let to any other person by such landholder or agent:

Relinquishment of land by tenant not holding under a lease.

Provided that, whenever an order for the enhancement of the rent of any land held by any such tenant is passed and the tenant within fifteen days of the date of such order gives to the landholder or his recognized agent notice in writing of his desire to relinquish such land at the commencement of the period in respect of which such enhancement takes effect, and relinquishes such land accordingly, he shall not be liable for the rent payable for such land in respect of any period subsequent to such relinquishment.

Proviso.

Explanation.—No notice can be given under this section in respect of a portion only of any land held under the same lease or engagement.

32. If the landholder or his agent refuses to receive any notice under section 31, or if he receives it, but refuses to sign and deliver a receipt for the same, the tenant may, before the expiration of the period limited for giving such notice, make an application to the tahsíldár, who shall thereupon cause the notice to be served on such landholder or agent, the tenant paying the costs of service.

Service through tahsíldár of notice of relinquishment.

33. The notice shall, if practicable, be served personally on the landholder or his agent; but if the landholder or his agent cannot be found, or if he evades service of the notice, 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

Mode of serving notice.

land is situate, at the *chaupál*, or other conspicuous place in the village where the land is situate.

Where the delay in serving the notice is owing to the fault of the landholder or his agent, the notice shall be deemed to have been served at the first attempt to serve it.

Application by landholder to set aside notice.

33A. When any such notice has been received by or served on a landholder or his agent he may, within fifteen days from such receipt or service, apply to the Collector or Assistant Collector to have such notice declared invalid, and the Collector shall thereupon determine the question between the parties.

If the landholder or his agent does not so apply within such period of fifteen days, he shall be deemed to have accepted the notice.

Liability of tenant to pay interest on arrear and to be ejected.

34. (*a*). When an arrear of rent remains due from any tenant, he shall be liable to pay interest on such arrear at one per cent. per mensem; and if the arrear remains due on the thirtieth day of June, to be ejected from the land in respect of which the arrear is due.

Bar to ejectment without decree.

(*b*). No tenant shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

Ejectment not to be decreed for certain acts or omissions.

(*c*). No ejectment of a tenant or forfeiture of a lease shall be decreed on account of any act or omission of the tenant—

(1) which is not detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let, or

(2) which by law, custom, or special agreement does not involve the forfeiture of the lease.

Explanation.—In clauses (*a*) and (*b*) the word 'tenant' does not include a thékadár and a katkanadár.

Ejectment of tenant at fixed rates, ex-proprietary, with right of occupancy, or holding under unexpired lease.

35. If the landholder desires to eject a tenant at fixed rates, an ex-proprietary tenant, an occupancy-tenant or a tenant holding under an unexpired lease, against whom a decree for arrears has been passed and remains unsatisfied, he may, after the expiration of the year, ending on the thirtieth day of June, in which such arrears accrued, apply to the Collector of the District or Assistant Collector to eject the tenant.

Such officer shall, on receiving such application, cause a notice to be served on the tenant, stating the amount due under the decree, and informing him that if he does not pay such amount into Court within fifteen days from receipt of the notice, he will be ejected from his land.

If such amount be not so paid, the Collector of the District or Assistant Collector may eject the tenant.

Service of notice on tenant for limited period.

36. If the landholder desires to eject a tenant not having a right of occupancy, or any other tenant holding only for a limited period, after the determination of his tenancy, he shall cause a written notice of ejectment to be served on such tenant under the provisions of this Act.

Language and contents of notice.

37. The notice of ejectment shall be written in the vernacular language and character of the district:

it shall specify the land from which the tenant is to be ejected;

and it shall inform him that he must vacate such land; or that, if he means to contest the right to eject him, he must apply to the Collector of the District or Assistant Collector for that purpose.

Mode of serving notice.

38. The notice shall be issued and served through the office of the tahsildár on application made to him between the first day of January and the first day of April in each year, and the landholder shall pay the cost of service: it shall be served personally on the tenant, if practicable; but if he cannot be found, service may be made by affixing the notice to his usual place of residence.

Effect of failure of tenant to institute suit to contest liability to ejectment.

39. (*a*). The tenant, on whom such notice has been served, may, within thirty days next after the service, make an application to the Collector of the District or Assistant Collector, contesting his liability to be ejected.

(*b*). When such an application is made, the Collector of the District or Assistant Collector shall proceed to determine the question between the parties.

(*c*). On the determination of such question adversely to the tenant, or, where no application under this section has been made within the said period of thirty days, on the expiration of such period, the tenancy of the land in respect of which the notice has been served shall cease:

Provided that when such question has been determined or such period has expired, as the case may be, before the first day of May next following the making of the application under section 38, the tenancy shall continue until and cease upon that day:

Provided also that the tenancy shall not cease under this section when after the service of the notice, the landholder authorises the tenant to continue in the occupation of the land.

Procedure to enforce ejectment.

40. If the landholder require assistance to eject the person whose tenancy is alleged to have ceased under the provisions of section 39, he may, within fifteen days from the date of such cessation, apply to the Collector of the District or Assistant Collector for such assistance, and the Collector of the District or Assistant Collector shall order the ejectment of such tenant if he is satisfied—

(*a*) that the notice was duly served on such tenant under section 38;

(*b*) that he has not been authorized by the landholder to continue in occupation;

(*c*) that the tenant has not made the application mentioned in section 39, clause (*a*); or

(*d*) that if such application has been made, the question has been determined adversely to the tenant:

Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received if the lease be of the kind in which an advance has been made by the lease-

holder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance either in money or by the usufruct of the land. In all such cases the landholder must proceed by suit in the Civil Court.

Notice of ejectment when void.

41. If the landholder expressly authorise the tenant, on whom the notice of ejectment has been served, or against whom any proceedings in ejectment under section 40 have been taken, to remain in occupation of the land, and to prepare it for the harvest, the proceedings shall become void.

Rights of ejected tenant.

42. (*a*). Any tenant ejected in accordance with the provisions of this Act, shall be entitled to any growing crops or other ungathered products of the earth belonging to the tenant, and growing on the land at the time of his ejectment, and to use the land for the purpose of tending and gathering in such crops or other products, paying adequate rent therefor:

Effect of tender by landholder of payment for crops.

(*b*). Provided that, if the landholder desire to purchase such crops or other products, he may tender their price to the tenant; and thereupon the right of the tenant to such crops and other products, and to use the land for the purpose aforesaid, shall cease.

Power to determine rent and price.

(*c*). In the case of a dispute under this section, the Collector of the District or Assistant Collector may, on the application of the landholder or tenant, award the rent and price so payable; and the amount of such award, or of any tender accepted under this section, shall be recoverable as an arrear of rent by suit under this Act.

Set-off of rent.

(*d*). The rent, if any, payable to the landholder by the tenant at the time of his ejectment may be set-off against the price of the said crops or other products.

Application for officer to divide produce or appraise crop.

43. (*a*). Wherever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other procedure of a like nature, requiring the presence both of the cultivator and landholder, either personally or by agent,

if either landholder or tenant, personally or by agent, neglect to attend at the proper time, or if there is a dispute as to the amount or value of the crop,

an application may be presented by either party to the Collector of the District or Assistant Collector, requesting that a proper officer be deputed to make the division, estimate or appraisement.

Procedure on such application.

(*b*). On receiving such application, the Collector of the District or Assistant Collector shall issue a written notice to the opposite party or his agent, to attend on the date and at the time specified in the notice, and shall depute an officer before whom such division, estimate or appraisement shall be made.

(*c*). If on or before the date appointed, the dispute has not been amicably adjusted, three residents of the village or neighbourhood shall be appointed assessors; one by each of the parties and one by the officer deputed to divide the grain or estimate or appraise the crops, and the officer deputed shall decide the amount of rent payable by their award, and shall give to the party applying a written authority to divide the grain or cut the crops:

(*d*). Provided that, if either party fail to attend, the officer deputed shall nominate an assessor on his behalf.

(*e*). The officer deputed shall report his proceedings to the Collector of the District or Assistant Collector, who shall determine the amount of costs properly incurred under this section, and the share of the costs to be paid by either party.

(*C*).—*Compensation for Improvements made by Tenants.*

Tenants' right to compensation for improvements.

44. If any tenant, or any person from whom he has inherited or purchased, make any such improvements on the land in his possession as are hereinafter mentioned, neither he nor his representative shall be ejected from the same land without payment of compensation for such improvements.

Explanation.—In this section the word "tenant" does not include a thékadár or a katkanadár and the word "improvements" 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—

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

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

(*c*) the reclaiming, clearing, or enclosing of lands for agricultural purposes,

(*d*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto.

Notwithstanding anything hereinbefore contained, no tenant, other than a tenant at fixed rates or an occupancy-tenant, shall be entitled to compensation in respect of any improvement made without the consent of the landholder after this Act comes into force.

Mode of making compensation.

45. Such compensation may, at the option of the landholder or his representative, be made—

1*st*,—by payment in money;

2*nd*,—by a rent to be charged on the land;

3*rd*,—by the grant of a beneficial lease of the land, by the landholder or his representative, to the tenant or his representative;

4*th*,—partly by one or by any two of the said ways, and partly by the others, or other of the same ways.

Settlement of difference as to amount or value of compensation.

46. In case of difference as to the amount or value of the compensation tendered, either party may apply to the Collector of the District or Assistant Collector stating the matter in dispute, and requesting a determination thereof.

On receiving such application, the Collector of the District or Assistant Collector shall—

(*a*) cause notice thereof to be served on the other party,

(*b*) take such evidence as the parties or either of them may adduce,

(*c*) make such further inquiry as the Collector of the District or Assistant Collector may deem necessary, and

(*d*) determine the amount of the payment in money, and the amount and incidence of the rent-charge, and the terms of the lease, or any of such matters.

Considerations in determining compensation.

47. In determining the amount or value mentioned in section 46, or the terms of such lease, the Collector of the District or Assistant Collector shall take into account any assistance given to the tenant by the landholder either directly in money, material or labour, for the purpose of making such improvements, or indirectly by allowing the tenant to hold at a favourable rate of rent.

(*D*).—*Compensation for wrongful acts and omissions.*

Right of tenant to compensation for exactions in excess of rent or for withholding receipt.

48. Every tenant from whom any sum is exacted in excess of the rent specified in his lease or payable under the provisions of this Act,

and every tenant from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the landholder compensation not exceeding double the amount so exacted or paid

Contents of receipt.

Receipts for rent shall specify the period or crop on account of which the rent is acknowledged to have been paid;

and any refusal to make such specification shall be held to be a withholding of a receipt.

Explanation.—In this section the word "tenant" does not include a thékadár or a katkanadár.

Damages for extorting payment of rent by duress.

49. If payment of rent, whether the same be legally due or not, is extorted from any tenant by illegal confinement or other duress, he shall be entitled to recover from the person guilty of such extortion such further compensation, not exceeding the sum of two hundred rupees, as the Collector of the District or Assistant Collector thinks reasonable.

Liability to punishment for extortion not affected.

An award of compensation under this section shall not bar or affect any penalty or punishment to which the person guilty of such extortion may be subject under the Indian Penal Code.

(*E*).—*Deposit of Rent in Court.*

Deposit of amount tendered by tenant and refused.

50. If any tenant tenders to the landholder full payment of the rent due from him, and if the amount so tendered be not accepted, and a receipt for the amount forthwith granted, the tenant may thereupon apply to the Collector of the District or Assistant Collector for leave to deposit such amount in his Court to the credit of the landholder.

Form and verification of application.

51. The application to the Collector of the District or Assistant Collector shall be as nearly as may be in the form (A) in the first schedule hereto annexed, and shall be verified in the manner hereinafter prescribed for the verification of plaints.

Penalty for false statement.

And the person making the verification shall be punishable, if the application contain any averment which he knows or believes to be false, or does not know or believe to be true.

Notice to issue on deposit being made.

52. The Collector of the District or Assistant Collector shall receive the amount which the tenant desires to deposit, and shall thereupon issue to the person to whose credit it has so been deposited, a notice in English or the vernacular language of the district in the form (B) in the first schedule hereto annexed, or to the like effect.

And such deposit shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

Mode of serving notice.

53. Such notice shall be served through the tahsíldár upon the person to whom it is addressed, or upon his recognized agent.

In their absence, the notice shall be affixed at the *chaupál*, or other conspicuous place in the village in which the land for which the rent is due is situate.

Payment to person served with notice on his application.

54. If at any time before the expiration of three years from the date of the deposit 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 be paid accordingly, unless it has been repaid or paid in accordance with the provisions next hereinafter contained.

Refund to depositor.

55. If no application be made by such person or his recognized agent, the sum shall be repaid to the depositor on the expiration of three years from the date of the deposit.

And at any time before the expiration of such period, on the joint application of the depositor and the person to whose credit the said sum was deposited, such sum shall be paid in such manner as the joint applicants desire.

Deposit in Court of rent claimed by two or more persons.

55A. When, owing to the death of the landlord or other cause, two or more persons severally claim the right to collect the rent from a tenant, the tenant may apply to the Collector of the District or the Assistant Collector for leave to deposit in Court the full amount of rent due from him, and such deposit, if made with the leave of the Collector or Assistant Collector, shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

The Collector of the District or Assistant Collector may, after such enquiry as he thinks necessary, direct payment of the amount deposited to such one of the persons claiming such rent as appears to him entitled to receive the same, or may order the same to remain in deposit pending decision by a competent Court.

No suit shall lie against the Secretary of State for India in Council or against any officer of Government in respect of any payment made under this section, but nothing herein contained shall affect the right of any person entitled to such

payment to recover the amount thereof from any other person to whom it has been paid.

CHAPTER III.

DISTRESS.

Produce of land hypothecated for rent.

56. The produce of all land in the occupation of a cultivator shall be deemed to be hypothecated for the rent payable in respect of such land; and until such rent has been satisfied, no other claim on such produce shall be enforced by sale in execution of decree or otherwise;

Recovery of arrears by distress.

and when an arrear of rent is due from any cultivator, the person entitled to receive rent immediately from him may, instead of suing for the arrear as hereinafter provided, recover the same by distress and sale of the produce of the land in respect of which the arrear is due, under the rules contained in this chapter.

57. Provided—

Distress of produce barred by security given for rent.

(*a*) that when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to be distrained:

Sharer when entitled to distrain.

(*b*) that no sharer in any mahál shall have power to distrain upon any cultivator unless he is entitled to collect the whole rent from such cultivator:

Distress by manager.

(*c*) that no sharer in a joint undivided mahál shall exercise such power otherwise than through a manager authorized to collect the rents of the whole mahál on behalf of all the sharers therein:

Distress in pattídárí mahálsi.

(*d*) that in pattídárí mahálsi distress shall be made only through a lambardár, or, where the rent of a pattí is not collected by a lambardár, through the pattídár who is entitled to collect the rent.

No distress for overdue arrear, nor, without agreement, for excess over past year's rent.

58. A distress shall not be made for any arrear which has been due in respect of any land for a longer period than one year:

nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless the rent has been enhanced under the provisions hereinbefore contained, or by order of a Settlement-officer, or unless the cultivator has agreed to pay such excess and such agreement has been attested before the kánúngo.

Distress by managers under Court of Wards, &c.

59. The power to distrain conferred by sections 56 and 57 may be exercised by managers under the Court of Wards and other persons lawfully entrusted with the charge of immoveable property;

and also by the agents employed by such persons as aforesaid, in the collection of rent, if expressly authorized by power-of-attorney in that behalf:

Liability for illegal act.

If any wrongful act is committed by any such agent, under colour of the exercise of the said power, such agent and his principal shall be jointly and severally liable to make compensation for such act.

Written authority to servants employed to distrain.

60. When any person, empowered to distrain property under section 56, section 57 or section 59, employs a servant, or other person to make the distress, he shall give him a written authority for the same, and the distress shall be made in the name of the person giving such authority.

Standing crops and crops gathered liable to distress.

61. 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 power to distrain under the provisions of this Act.

Exception.

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

Defaulter to be served with written demand and account.

62. Before or at the time when a 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.

Mode of service.

The demand and account shall, if practicable, be served personally on the defaulter; or, if he abscond or conceal himself, so that they cannot be so served, shall be affixed at his usual place of residence.

Distress to be proportionate to arrear.

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

List of property to be prepared and copy served on owner.

Standing crops, &c., when distrained, may be reaped and stored.

64(*a*). Standing crops and other ungathered products may, notwithstanding the distress, be reaped and gathered by the cultivator, and he may store the same in such granaries or other places as are commonly used by him for the purpose.

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

(*c*). In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose.

Sale of products which cannot be stored.

(*d*). Crops or products which, from their nature, do not admit of being stored, may be sold before they are reaped or gathered, under the rules hereinafter provided; but in such case, the distress shall be made at least twenty days before the time when the crops, or products, or any part of the same are fit for reaping or gathering.

65. If a distrainer is opposed, or apprehends resistance, and desires to obtain the assistance of a public officer, he may apply to the Collector of the District or Assistant Collector, who may, if he thinks necessary, depute an officer to assist the distrainer in making the distress.

Assistance to distrainer opposed or apprehending resistance.

66. If at any time after property has been distrained and before the day fixed for putting it up to sale as hereinafter provided, the owner of the property tenders payment of the arrear demanded of him, and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

Distress to be withdrawn on tender of arrear and expenses before sale.

67. Within five days from the time of the storing of any distrained crops or products,

Application for sale.

or, if the crops or products do not, from their nature, admit of being stored within five days from the time of making the distress,

the distrainer shall apply for sale of the same to the officer for the time being authorized by the Local Government to sell distrained property within the tahsíl in which they are situate.

68. The application shall be in writing, and shall contain—

Contents of application.

(*a*) an inventory or description of the property distrained,

(*b*) the name of the defaulter and his place of residence,

(*c*) the amount due, and the date of the distress, and

(*d*) the place in which the distrained property is.

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

Fee for service of notice.

69. Immediately on receipt of the application, the said officer shall send a copy of it to the Collector of the District or Assistant Collector,

Procedure on receipt of application.

and shall serve a notice in the form (C) contained in the first schedule hereto annexed, or to the like effect, on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector of the District or Assistant Collector, within the period of fifteen days from the receipt of the notice.

He shall at the same time send to the Collector of the District or Assistant Collector, for the purpose of being put up in his office and in the office of the tahsíldár, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain—

(*a*) a description of the property,

and shall specify—

(*b*) the demand for which it is to be sold, and

(*c*) the place where the sale is to be held.

70. If a suit is instituted before the Collector of the District or Assistant Collector in pursuance of the aforesaid notice, the Collector of the District or Assistant Collector shall send to the officer referred to in section 67, or, if so requested, shall deliver to the owner of the distrained property, a certificate of the institution of such suit;

Suspension of sale on receipt of Collector's certificate of institution of suit.

and on such certificate being received by, or presented to, the said officer, he shall suspend the sale.

71. A person whose property has been distrained in manner hereinbefore provided may, immediately after the distress, and before the issue of notice of sale, institute a suit to contest the demand of the distrainer.

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

When such suit is instituted, the Collector of the District or Assistant Collector shall proceed in the manner prescribed in the last preceding section.

If, thereafter, application for the sale of the property is made to the said officer, he shall send a copy of the application to the Collector of the District or Assistant Collector, and suspend further proceedings, pending the decision of the case.

72. 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 a surety, binding himself to pay whatever sum may be adjudged to be due from him, with interest and costs of suit;

Distress when to be withdrawn.

and when such bond is executed, the Collector of the District or Assistant Collector shall give to the owner of the property a certificate to that effect, and, if so requested, shall serve the distrainer with notice of the same;

and upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Collector of the District or Assistant Collector, the property shall be released from distress.

73. If the institution of a suit to contest the demand of the distrainer has not been certified, in manner hereinbefore provided, to the said officer, on or before the day fixed in the proclamation of sale, he shall, unless the said demand, with such costs of the distress as are allowed by him, be discharged in full, proceed, in manner hereinafter mentioned, to sell the property or such part of it as may be necessary to satisfy the demand with the costs of distress and sale.

When sale may be proceeded with.

74. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the said officer is of opinion that it is likely to sell there to better advantage.

Place of sale.

The property shall be sold by public auction, in one or more lots, as the officer holding the sale may think advisable;

Manner of sale.

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.

Withdrawal of distress when demand and costs satisfied.

75. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) be not offered for it, and if the owner of the property, or some person authorized to act on his behalf, apply to have the sale postponed until the next day, or, if a market be held at the place of sale, the next market-day, the sale shall be postponed until such day and shall be then completed whatever price may be offered for the property.

If fair price be not offered, sale may be postponed and shall be then completed.

76. The price of every lot shall be paid for in ready money at the time of sale, or as soon thereafter as the officer holding the sale thinks necessary;

Payment of purchase-money.

and, in default of such payment, the property shall be put up again and sold, and the deficiency in price (if any) which may happen on such second sale and all expenses attending such second sale shall, at the instance either of the distrainer or the owner of the property, be recoverable from the defaulter under the rules hereinafter contained for the execution of a decree for rent.

Re-sale on default.

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

Certificate to purchaser.

77. From the proceeds of every sale of distrained property under this Act, the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall send the amount so deducted to the Collector of the District or Assistant Collector.

Deduction, from proceeds, of costs of sale.

He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress, and of the issue of the notice and proclamation of sale prescribed in section 69, to such amount as, after examining the statement of expenses furnished by the distrainer, he thinks proper to allow.

Payment of distrainer's expenses.

The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale;

Discharge of arrear with interest.

and the surplus (if any) shall be delivered to the person whose property has been sold.

Surplus.

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

Sale-officers and employés prohibited from purchasing.

79. Officers holding sales under this Chapter are required to bring to the notice of the Collector of the District or Assistant Collector any material irregularities committed by distrainers under colour of this Act;

Report of irregularities by distrainer.

and if, in any case, on proceeding to hold any such sale, the officer holding it find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector of the District or Assistant Collector, who shall thereupon direct the issue of another notice and proclamation of sale under section 69, or pass such other order as he thinks fit.

Postponement of sale, and report to Collector when owner has not received due notice.

Order of Collector.

80. When an officer goes to any place for the purpose of holding a sale under this Act, and no sale takes place, either for the reason stated in section 79, or because the demand of the distrainer has been previously satisfied without any intimation of such satisfaction having been given by the distrainer to such officer, the charge of one anna in the rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained property.

Levy of charge when sale-officer attends, and no sale takes place.

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

Recovery from owner.

In every other case it shall be paid by the distrainer, and may be recovered by attachment and sale of his property under the warrant of the Collector of the District or Assistant Collector:

Recovery from distrainer.

Provided that in no case shall a larger amount than ten rupees be recoverable under this section.

Limit to charge.

81. When a suit has been instituted to contest the demand of a distrainer, and the distrained property has not been released on security, if the demand or any portion of it is adjudged to be due, the Collector of the District or Assistant Collector shall issue an order to the officer authorizing the sale of such property;

Order of sale when amount adjudged due.

and, on the application of the distrainer within five days from the receipt of such order by the officer, such officer shall publish a second proclamation in the manner prescribed in section 69, fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation;

Second proclamation of sale.

and, unless the amount adjudged to be due with the costs of distress be paid, shall proceed to sell the property in the manner hereinbefore provided.

Sale on failure to pay debt and costs.

82. (*a*) In all suits instituted to contest the distrainer's demand, he shall be required to prove the arrear in the same manner as if he had himself brought a suit for the amount under the provisions hereinafter contained.

In suit to contest his demand, distrainer to prove arrear.

(*b*) If the demand or any part thereof is found to be due, the Collector of the District or Assistant Collector shall make a decree for the amount in favour of the distrainer, and such amount may be recovered by sale of the property, as provided in the last preceding section, if the distress has not been withdrawn;

Recovery of amount decreed in favour of distrainer.

and, if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter,

or if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety.

(*c*) If the distress is adjudged to be vexatious or groundless, the Collector of the District or Assistant Collector, besides directing the release of the distrained property, may award such compensation to the plaintiff as the circumstances of the case require.

Compensation in case of vexatious distress.

83. (*a*) If any person claim 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 conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand.

Suit by person claiming property distrained for arrears alleged to be due from another.

(*b*) When any such suit is instituted, the property may be released upon security being given for the value of the same.

Release of property on security being given.

(*c*) If the claim is dismissed, the Collector of the District or Assistant Collector shall make an order for the sale of the property, or for the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

Order of Collector when claim dismissed.

(*d*) If the claim is upheld, the Collector of the District or Assistant Collector shall decree the release of the distrained property with costs, and such compensation (if any) as the circumstances of the case require:

Decree for release and compensation when claim upheld.

(*e*) Provided that no claim to any produce of land liable to distress under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any civil Court prevail against such prior claim.

Saving of prior claim of person entitled to rent of land.

84. If, in any case in which property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, the right to distrain for such arrears is claimed by or on behalf of any person other than the distrainer, on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by him before and up to the time of the commencement of the suit shall be enquired into, and in deciding the suit the result of such inquiry shall be taken into consideration:

Procedure where right to distrain is claimed by person other than distrainer.

Provided that the decision of the Collector of the District or Assistant Collector shall not affect the right of any person who may have a legal title to the rent of the land to establish his title by suit in the civil Court if instituted within one year from the date of the decision.

Saving of right to sue in civil Court.

85. If 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, is prevented by any sufficient cause from bringing a suit to contest the demand or to try the right to the property, as the case may be, within the period allowed by section 69 or 83, and his property is in consequence sold, he may, nevertheless, institute a suit under this Act to recover compensation for such distress and sale.

Persons prevented from suing in time to save property from sale may sue for damages.

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

Wrongful acts of distrainer.

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

or if the distress is not immediately withdrawn when it is required to be withdrawn by any provision of this Act,

the owner of the property may institute a suit under this Act to recover compensation for any injury which he has thereby sustained through any act or omission mentioned in the former part of this section.

87. If any person not empowered to distrain property under section 56, 57 or 59, nor employed for the purpose under a written authority by a person so empowered, fraudulently distrains or sells, or causes to be sold, any property under colour of this Act, the owner of the property so distrained or sold may institute a suit under this Act to recover compensation from such person for any injury which the plaintiff has sustained from the distress or sale,

Suit by owner against person distraining or selling without authority.

and the defendant shall be held to have committed criminal trespass, and shall be subject to the penalties provided for that offence by the Indian Penal Code, in addition to any damages which may be awarded against him in such suit.

Penalty in addition to damages.

88. Provided that every suit instituted under any of the three last preceding sections shall be commenced within the period allowed by section 94.

Limitation of suits under sections 85, 86, 87.

89. (*a*) If any person resists a distress of property duly made under this Act, or forcibly or clandestinely removes any distrained property, the Collector of the District or Assistant Collector in charge of the Sub-division, upon complaint being made within fifteen days from the date of such resistance or removal, may cause the person accused to be arrested and brought with all convenient speed before the Collector or Assistant Collector, who shall, if possible, proceed forthwith to try the case.

Procedure in case of resistance of distress.

(*b*) If the case cannot be at once heard, the Collector of the District or Assistant Collector may, if he think fit, require the party arrested to give

security for his person, and, in default of such security, may commit him to the civil jail until the case is tried,

and if the offence be proved and the offender be the owner of the property concerned, the Collector of the District or Assistant Collector may order him to be imprisoned in the civil jail for a term not exceeding six months, unless the whole arrear due to the distrainer, with all reasonable expenses and costs, is previously to the expiration of such term paid or levied under warrant of the Collector of the District or Assistant Collector by distress and sale of the property of the offender.

(*c*) If the offender be not the owner of the property concerned, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred rupees, or, in default of payment thereof, to imprisonment in the civil jail for a term which may extend to two months.

90. All proceedings of officers distraining, or assisting distrainers, or holding sales, under this chapter, shall be subject to the revision and orders of the Collector of the District or Assistant Collector in charge of a Sub-division of the District.

Proceedings of officers subject to revision and orders of Collector.

CHAPTER IV.

PROCESS.

91. (*a*) Every process issued by a Collector of a District or Assistant Collector under this Act shall be under his seal and signature, and shall be served or executed by the Názir, or by such other officer as the Collector of the District or the Assistant Collector may direct, at the cost of the party at whose instance it is issued.

Mode of serving process.

(*b*) The amount of such cost, and, in the case of summons to a witness, the sum required for his travelling expenses, shall be deposited in Court before the process is issued:

Deposit before issue.

(*c*) Provided that, if in any case the Collector of the District or the Assistant Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

Power to direct service gratis.

92. Any resistance or opposition to the lawful process of a Collector of the District or Assistant Collector under this Act may be punished by him according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of civil justice.

Punishment for resisting process.

When, in any such case, the offender is not present, the Collector of the District or Assistant Collector may summon him to answer to the charge: and, if after due service of the summons he fails to attend, may issue a warrant for his arrest.

Power to issue summons and warrant.

CHAPTER V.

JURISDICTION OF COURTS.

93. Except in the way of appeal as hereinafter provided, no Courts other than Courts of Revenue shall take cognizance of any dispute or matter in which any suit of the nature mentioned in this section might be brought, and such suits shall be heard and determined in the said Courts of Revenue in the manner provided in this Act, and not otherwise:

Suits cognizable by revenue Courts only.

(*a*) suits for arrears of rent, or, where rent is payable in kind, for the money-equivalent of rent, on account of land or on account of any rights of pasturage, forest-rights, fisheries or the like;

(*b*) suits to eject a tenant for any act or omission detrimental to the land in his occupation or inconsistent with the purpose for which the land was let;

(*c*) suits to cancel a lease for the breach of any condition binding on the tenant, and which, by law, custom or special agreement, involves the forfeiture of the lease;

(*cc*) suits for compensation for, or to prohibit, any act, omission or breach mentioned in clause (*b*) or clause (*c*);

(*d*) suits for the recovery of any over-payment of rent, or for compensation under section 48 or 49;

(*e*) suits for compensation for withholding receipt for rent paid;

(*f*) suits for contesting the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in the exercise of the said power, or for compensation for wrongful acts or omissions of a distrainer;

(*g*) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues for which the co-sharers may be responsible to the lambardár;

(*h*) suits by recorded co-sharers for their recorded share of the profits of a mahál, or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts;

(*i*) suits by muáfidárs, or assignees of the Government-revenue, for arrears of revenue due to them as such;

(*j*) suits by taluqdárs and other superior proprietors for arrears of revenue due to them as such;

(*k*) suits by recorded co-sharers to recover from a recorded co-sharer who defaults arrears of revenue paid by them on his account.

94. Suits for arrears of rent or revenue, or for a share of the profits of a mahál, or of village-expenses or other dues, shall not be brought after three years from the day on which the arrears or share became due.

Limitation of suits under this Act.

Suits relating to distress, not being suits to contest the demand or to try the right to the property, shall not be brought after three months from the day on which the right to sue accrued:

All other suits must be brought within one year from the day on which the right to sue accrues, unless otherwise specially provided for in this Act.

The day on which the arrears become due or the day on which the right to sue accrues (as the case may be) shall be excluded in computing the periods of limitation prescribed by this section.

In the absence of any express agreement among the co-sharers and of any order by the Settlement-officer under the North-Western Provinces Land-revenue Act, 1873, section 65, clause (*g*), the

Board may from time to time, with the previous sanction of the Local Government, make rules for fixing the dates on which profits shall be divisible by the lambardárs.

95. No Courts other than Courts of revenue shall take cognizance of any dispute or matter on which any application of the nature mentioned in this section might be made: and such applications shall be heard and determined in the said Courts in manner provided under this Act, and not otherwise:—

Applications cognizable by revenue Courts only.

(*a*) Application to determine the nature and class of a tenant's tenure, under section 10.

(*b*) Application by a landholder, or his agent, to compel a patwárí to produce his accounts relating to land.

(*c*) Application to resume rent-free grants under section 30, or to assess to rent land previously held rent-free.

(*d*) Application from a landholder to eject a tenant under section 35, or to have a notice of ejectment issued and served under section 38.

(*e*) Applications made by a tenant under section 39.

(*f*) Application from a landholder, under section 40, for assistance to eject a tenant.

(*g*) Application from a tenant or landholder to determine the value of any standing crop, or ungathered products of the earth, belonging to the tenant and being on the land at the time of his ejectment, under section 42.

(*h*) Application by a landholder to determine rent payable for land used by a tenant for the purpose of tending or gathering in the crop, under section 42.

(*i*) Application by a landholder or tenant for assistance in the division or appraisement of a standing crop, under section 43.

(*j*) Application by a landholder or tenant to determine compensation for improvements of land.

(*k*) Application by a tenant for leave to deposit rent.

(*l*) Application for enhancement or determination of rent.

(*m*) Application for compensation for wrongful dispossession.

(*n*) Application for the recovery of the occupancy of any land of which a tenant has been wrongfully dispossessed.

(*o*) Application for abatement of rent.

(*p*) Application for leases or counterparts, and for the determination of the rates of rent at which such leases or counterparts are to be delivered.

(*q*) Application under section 7 to have the holding of an ex-proprietary tenant divided off.

(*r*) Application under section 22A to survey land.

(*s*) Application under section 33A to have a notice of relinquishment declared invalid.

(*t*) Application to take out of deposit any amount deposited under section 55A.

For the purposes of the Court-fees Act, 1870, applications under clauses (*c*), (*l*), (*m*), (*n*), (*o*) and (*p*) of this section shall be deemed to be plaints in suits.

95A. When any order has been made on an application under this Act, no process for the execution of such order shall be issued on an application made after the lapse of one year from the date of such order, except when special provision is otherwise made in this Act.

Limitation of process of execution on applications.

96. (*a*) All applications under section 95 shall be made in the district in which the land, crops or products referred to is or are situate.

Points of procedure relating to applications under section 95.

(*b*) All orders passed on applications under section 95 shall be proved in the same manner, and when proved shall have the same effect, as if they were judgments of the civil Courts.

(*c*) In cases wherein a specific sum of money is adjudged to be due, or any costs or damages are awarded, all such orders may be executed by any process in use for the recovery of an arrear of revenue or rent.

(*d*) In cases wherein possession of immoveable property is adjudged, the officer making the award may deliver over possession in the same manner, and with the same power, in regard to contempts, resistance and the like, as may be lawfully exercised by the civil Courts in execution of their own decrees.

(*e*) Applications under clauses (*m*) and (*n*) of section 95 shall not be brought after six months from the date of the wrongful dispossession.

96A. All suits and applications under this Act may, with the consent of the parties, be referred to arbitration under section 220 to section 231 (both inclusive) of the North-Western Provinces Land-revenue Act, 1873.

Reference to arbitration.

97. The Local Government may invest any officer with the powers of an Assistant Collector of the first or second class under this Act, and may at any time withdraw such powers.

Power to invest officers with Assistant Collector's powers, and withdraw them.

98. Assistant Collectors of either class shall have, as such, power to try suits and applications of the following descriptions:—

Suits and applications cognizable by Assistant Collectors.

(*a*) suits for arrears of rent or the money equivalent of rent on account of land, or on account of any rights of pasturage, forest rights, fisheries or the like;

(*b*) suits for compensation for withholding receipts for rent paid, under section 48;

(*c*) suits to contest the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in exercise of the said powers, or for compensation for wrongful acts or omissions of a distrainer;

(*d*) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues, for which the co-sharers may be responsible to the lambardár;

(*e*) suits by muáfídárs or assignees of the Government-revenue for arrears of revenue due to them as such;

(*f*) suits by taluqdárs or other superior proprietors for arrears of revenue due to them as such;

(*g*) applications by a landholder, or by an agent employed by a landholder, to compel the production of accounts by patwárís;

(*h*) applications by a tenant or landholder to determine the value of any standing crops or ungathered products of the earth, and being on the land at the time of his ejectment, under section 42;

(*i*) applications by a landholder to determine the amount of rent payable by a tenant using land for the purpose of tending or gathering in crops, under section 42;

(*j*) applications by a landholder or a tenant for assistance in the division or appraisement of standing crops, under section 43;

(*k*) applications by tenants for leave to deposit rent;

(*l*) suits under section 93, clause (*k*), to recover arrears of revenue.

(*m*) applications under section 22A to survey land.

99. Assistant Collectors of the first class, in addition to the suits and applications specified in section 98, shall have power to try suits and applications of the following descriptions:—

Additional suits and applications triable by Assistant Collectors, first class.

(*a*) suits to eject a tenant for any act or omission detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let;

(*b*) suits to cancel a lease for any breach of any condition binding on the tenant;

(*bb*) suits for compensation for, or to prohibit, any act, omission or breach mentioned in clause (*a*) or clause (*b*);

(*c*) suits for the recovery of any over-payment of rent or for compensation, under section 48 or section 49;

(*d*) suits by co-sharers for their shares of the profits of a mahál or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts;

(*e*) applications by a landholder to eject a tenant, under section 35;

(*f*) applications under section 39 by a tenant contesting notice of ejectment;

(*g*) applications by a landholder under section 40, for assistance to eject a tenant on whom notice of ejectment has been served;

(*h*) applications for compensation for wrongful dispossession;

(*i*) applications by a landholder or tenant to determine the amount to be paid as compensation for improvements;

(*j*) applications to recover the occupancy of any land from which a tenant has been wrongfully dispossessed by the landholder;

(*k*) applications under section 30 for the resumption of rent-free grants or for the assessment to rent of land hitherto held rent-free;

(*l*) applications under section 7 to have the holding of an ex-proprietary tenant divided off;

(*m*) applications under section 33 A to have a notice of relinquishment declared invalid;

(*n*) applications to take out of deposit amounts deposited under section 55A.

100. In addition to the powers specified in sections 98 and 99, an Assistant Collector of the first class, specially empowered by Government in this behalf, shall have power to try the following applications:

Additional applications triable by Assistant Collector, first class, with special powers.

(*a*) applications for enhancement or determination of rent;

(*b*) applications for abatement of rent;

(*c*) applications for leases or counterparts, and the determination of the rates of rent at which such leases or counterparts are to be delivered;

(*d*) applications to determine the nature or class of a tenant's tenure.

101. The Collector of the District, or any Assistant Collector in charge of a sub-division of a district, may make over any case, or class of cases, for inquiry and decision, from his own file, to any of his subordinates competent to deal with such case or class of cases under the provisions of this Act.

Power to make over cases.

102. Collectors of Districts, and Assistant Collectors in charge of sub-divisions of districts, may, respectively, withdraw any case or class of cases from any officers subordinate to them, and may deal with such case or class of cases themselves, or refer it for disposal to any other such Revenue-officer competent to deal with the same under the provisions of this Act.

Power to withdraw cases.

103. The Collector of the District may exercise—

Powers exerciseable by Collector of District.

(*a*) all powers given by this Act to Collectors of Districts,

(*b*) all powers which by this Act are conferred, or can be conferred, on Assistant Collectors.

The Local Government may invest any officer in charge of a sub-division of a district with all or any of the powers conferred by this Act on a Collector of a District.

Investment of officer in charge of sub-division with powers of Collector of District.

In conferring powers under this Act, the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

Mode of conferring powers.

CHAPTER VI.

PROCEDURE IN SUITS UP TO JUDGMENT.

104. Suits under this Act shall be instituted in the district in which the subject of the suit, or some part thereof, is situate,

Place of instituting suits.

and all such suits shall be commenced by presenting to the Court a plaint, which shall contain—

Plaint.

(*a*) the name, description and place of abode of the plaintiff;

(*b*) the name, description and place of abode of the defendant, so far as they can be ascertained;

(*c*) the subject-matter of the claim, and its amount or value computed according to the Court-fees Act, 1870; and

(*d*) the date on which the right to sue accrued.

105. For the purpose of suing or being sued under this Act, the managers of mahals, whether held under the Court of Wards or under direct management, shall be deemed to be landholders.

Managers of mahals to be, for purpose of litigation, deemed landholders.

106. No co-sharer in an undivided property shall, in that character, be entitled separately to sue a tenant under this Act, unless he is authorized to receive from such tenant the whole of the rent payable by such tenant; but nothing in this section shall affect any local custom or any special contract.

Suits by co-sharers in undivided property.

107. The plaint shall be presented by the plaintiff, or by an agent duly authorized on his behalf, who has personal knowledge of the facts of the case, or by an agent accompanied by a person who has such knowledge.

Plaint by whom presented.

The plaint shall be subscribed and verified at the foot by the plaintiff or his agent in the manner following, or to the like effect:—

Verification of plaint.

"I, *A. B.*, the plaintiff named in the above plaint, do declare that what is stated therein is true to the best of my knowledge and belief."

If the plaint contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

False averment.

108. If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Court at the time of presenting his plaint.

Document relied on by plaintiff to be presented with plaint.

Unless such document be so delivered, or its non-production be sufficiently excused, or unless the Court see fit to extend the time for producing the same, it shall not afterwards be admitted.

Admission afterwards.

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

Procuring production of document in possession of defendant.

110. If the suit be for the recovery of an arrear of rent or revenue, or of a share of profits or village-expenses, or other dues under section 93, the plaint shall specify the name of the village and estate, and of the pargana or other local division in which the land is situate:

Plaint in suits for arrears of rent.

and, if the suit be for an arrear of rent alleged to be due from any tenant, the plaint shall also specify the quantity of land, and (where fields have been numbered in a Government-survey) the number of each field, and yearly rent of the land; the amount (if any) received on account of the year for which the claim is made; and in all cases coming under this section the plaint shall specify the amount in arrear, and the time in respect of which it is alleged to be due.

111. If the suit be for the ejectment of a tenant from any land, the plaint shall describe (as circumstances may require) the extent, situation and designation of the land; and, if necessary for its identification, shall set forth its boundaries.

Plaint in suits for ejectment.

112. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Court may, at its discretion, return it to the plaintiff, or allow it to be amended.

Return or amendment of plaint.

112A. The Court may, on or before the first hearing upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

Court may dismiss or add parties.

and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

No person shall be added as a plaintiff without his own consent thereto.

Consent of person added as plaintiff.

All parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and the proceedings as against them shall be deemed to have begun only on the service of such summons:

Defendants added to be served.

Provided that, when a defendant dies and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

112B. Where a defendant is added, the plaint, if previously filed, shall, unless the Court directs otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

When defendant added, plaintiff to amend.

112C. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for mis-joinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing, and any such objection not so taken shall be deemed to have been waived by the defendant.

Time for taking objections as to non-joinder or mis-joinder of parties.

112D. If the plaint be admitted, the plaintiff shall present as many copies on plain paper of the plaint as there are defendants, unless the Court, by reason of the length of the plaint, or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required in the suit, in which case he shall present such statements.

Procedure on admitting plaint.

Concise statements.

113. If the plaint be in proper form, the Court, except as otherwise hereinafter specially provided, shall direct the issue of a summons to the defendant,

Issue of summons.

and if the plaintiff require the personal attendance of the defendant, and satisfy the Court that such attendance is necessary, or the Court of its own accord require such attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons.

Order for personal attendance or appearance by agent.

If the plaintiff or the Court does not require the personal attendance of the defendant, the summons shall order the defendant to appear either personally or by an agent duly authorized on his behalf, who has personal knowledge of the subject, or is accompanied by a person who has such personal knowledge.

114. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held,

Fixing of day to be specified in the summons.

and the summons shall order the defendant to produce any document in his possession or power of which the plaintiff demands inspection, or upon which the defendant relies in support of his defence.

Order to produce documents.

It shall also direct him to bring with him his witnesses, if they are willing to attend without issue of process,

Order to bring witnesses.

and it shall be in the form (D) contained in the first schedule hereto annexed, or to the like effect.

Form of summons.

It shall be accompanied with one of the copies or concise statements mentioned in section 112 D.

Copy or statement annexed to summons.

115. The summons shall be served by delivering a copy thereof to the defendant personally when practicable;

Mode of serving summons.

or, if the copy cannot be delivered to the defendant personally, by affixing copy of the summons to some conspicuous part of his usual residence, and also affixing a copy of the same in the Court.

116. If the summons be served by delivering a copy to the defendant personally, the Názir shall endorse on the summons the fact of such service.

Endorsement on summons.

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

117. If the usual residence of the defendant be in another district, the summons shall be sent by the public post to the Collector of such district, who shall issue the summons, and return the same, after service, with the prescribed endorsement, to the officer by whom it was transmitted to him.

Service of summons in another district.

117A. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post, if there be postal communication between such place and the place where the Court is situate.

Service when defendant resides out of British India and has no agent to accept service.

117B. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent by post or otherwise for the purpose of being served upon the defendant; and if the Resident or Agent return the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of such service.

Service through British Resident or Agent of Government.

Deposit of cost of serving summons or warrant.

118. The amount of the cost of serving the summons, or, if a warrant be issued as provided in the next following section, of serving the warrant,

shall in all cases be deposited in Court by the plaintiff within such time before the issue of such summons or warrant as is fixed by the Court issuing the process.

If the said amount be not so deposited (except where the Court in exercise of the discretion reserved to it in section 91 allows the summons to be served gratis), the case shall be struck out of the list of pending suits;

Effect of failure to deposit.

but in such case the plaintiff may present another plaint at any time within the period allowed by the rules herein contained for the limitation of suits.

119. (*a*) If in any suit against a tenant for the recovery of an arrear of rent, or in any suit for the recovery of an arrear of revenue, or a share of profits or village-expenses or other dues, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, the plaintiff small present, with his plaint, an application for the issue of such warrant.

Procedure when plaintiff desires issue of warrant of arrest.

(*b*) When such application is presented, the Court shall examine the plaintiff or his agent, and inspect the documents adduced by him in support of his claim; and if *prima facie* it appear to the Court that the claim is well founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Court may issue a warrant for his arrest.

(*c*) The Court shall fix a reasonable time for the return of the warrant, and the officer entrusted with the service thereof shall, at the time of arresting the defendant, deliver to him one of the copies or concise statements mentioned in section 112D and a notice requiring him, if he contest the claim, to bring with him any document upon which he relies in support of his defence.

(*d*) Every warrant issued and notice delivered under this section shall be respectively in the forms (E) and (F) in the first schedule hereto annexed, or to the like effect.

120. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Court.

Procedure after arrest of defendant.

121. When a defendant is brought before the Court under warrant, the Court shall, with all convenient speed, proceed to try the case in the manner hereinafter provided,

Procedure when defendant is brought before Court under warrant.

and if the suit cannot be at once adjudicated, the Court may, if it think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is pending, or until execution of the final decree which may be passed thereon,

and may commit him to the civil jail to be there detained until he furnishes such security or deposits such sum as the Court orders.

The security-bond shall be in the form (G) contained in the first schedule hereto annexed, or to the like effect.

Form of security-bond.

122. If the defendant cannot be arrested under the warrant, the Court, on the application of the plaintiff, shall either postpone the case for such period as to it seems proper, in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation, to be affixed in its own office and at the residence of the defendant, appointing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice, at the residence of the defendant.

Procedure when defendant cannot be arrested under warrant.

If the defendant appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding section.

123. If it appear to the Court that the arrest of the defendant was applied for without reasonable cause, the Court may, in its decree, award to him such sum not exceeding one hundred rupees as it may deem a reasonable compensation for any injury or loss which he has sustained by reason of such arrest, or of his detention in jail during the pendency of the suit.

Compensation for arrest applied for without reasonable cause.

124. If on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case may be struck off, with liberty to the plaintiff to bring a fresh suit, unless precluded by the rules herein contained for the limitation of suits.

Consequence of neither party appearing on day fixed.

125. If on any such day only the defendant appears, the Court shall pass judgment against the plaintiff by default, unless the defendant admits the plaintiff's right to the relief which he claims, in which case the Court shall proceed to give judgment for the plaintiff upon such admission without costs:

Judgment by default.

Judgment upon admission of claim.

Provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

Proviso.

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

If plaintiff only appear, Court may proceed *ex parte*.

127. If the defendant appear on any subsequent day to which the hearing of the suit is postponed under the last preceding section, the Court may, upon such conditions, if any, as to costs or otherwise as it thinks proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

If defendant appear on adjourned hearing, Court may allow him to be heard in answer.

128. (*a*) No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance.

No appeal from judgment *ex parte* or by default;

(*b*) But in all such cases, if the party against whom judgment has been given appears, either in person or by agent, if a plaintiff, within fifteen days from the date of the Court's decree, and, if a defendant, within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period, and shows sufficient cause for his previous non-appearance, and satisfies the Court that there has been a failure of justice, the Court may, upon such terms as to costs or otherwise as it thinks proper, revive the suit and alter or rescind the judgment according to the justice of the case.

but Court may revive suit and alter or rescind judgment.

(*c*) But no judgment shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

Adverse party to be summoned.

129. When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned, for sufficient reason to be recorded by the Court, the Court shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other party or his agent.

Examination.

130. If either of the parties be not bound to attend personally, any agent by whom he appears, or any person accompanying such agent, may be examined and cross-examined in like manner as the party himself would have been if he had attended personally.

Examination and cross-examination of agents.

131. At the time of the examination, the defendant may, if he think fit, file a written statement in his defence.

Defendant may file written statement.

Such written statement shall be subscribed and verified in the manner hereinbefore provided for subscribing and verifying plaints, and if it contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

Verification of written statement.

False averment.

132. The examination of the parties or their agents, or such other persons as aforesaid, shall be according to the law for the time being in force relative to the examination of witnesses in the civil Courts.

Mode of examination.

The substance of the examination shall be reduced to writing in the mother-tongue of the presiding officer, and shall be filed with the record.

133. If either of the parties produce a witness on such day, the presiding officer may take the evidence of such witness.

Witness produced may be examined.

134. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit:

Document relied on by defendant to be produced at first hearing.

and unless such document be so delivered, or its non-production be sufficiently excused, or unless the presiding officer see fit to extend the time for delivering the same, it shall not afterwards be admitted.

135. If after the examination required by section 129, and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can be properly made without further evidence, the Court shall make its decree accordingly.

Decree after examination, if no further evidence is required.

136. If on such examination as aforesaid either party is absent and his agent is unable to answer any material question relating to the case which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the case to a future day, and direct that the party whose agent was unable to answer as aforesaid shall attend in person on such day;

Party to attend in person when his agent is unable to answer.

and if such party fails to appear in person on the day appointed, the Court may pass judgment as in case of default, or make such other order as it deems proper in the circumstances of the case.

Judgment or order if he fail to appear.

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

Procedure when parties at issue on question requiring evidence.

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

Parties to produce witnesses or procure attendance by summons.

139. The law and rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination, remuneration and punishment of witnesses, whether parties to the case or not, in cases before the civil Courts, shall, except so far as may be inconsistent with the provisions herein contained, apply to suits under this Act.

Provisions regarding attendance, examination, &c., of witnesses.

140. If on the day fixed for the trial of any issue neither of the parties appear, the case may be struck off, with liberty to the plaintiff to bring a fresh suit.

Case to be struck off if neither party appears.

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

Trial of issue *ex parte*.

141. When suits under this Act are instituted or defended by agents employed in the collection of rent or management of land, in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such agents;

Provisions to apply when suits are instituted or defended on behalf of landholders by agents.

and anything which by this Act is required or permitted to be done by a party in person may be done by any such agent as aforesaid.

Processes served on any such agent shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person:

Processes served on such agents.

and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such agent.

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

Personal attendance of female plaintiff or defendant when not required.

143. Any party to a suit may employ an authorized agent to conduct the case on his behalf:

Parties may employ agents.

but the employment of such agent shall not excuse the personal attendance of the plaintiff or defendant, in cases where his personal attendance is required by the summons, or any order of the Court;

Personal attendance when not excused.

and no fee for any agent shall be charged as part of the costs of suit in any case under this Act, unless the Court certifies that, under the circumstances of the case, such fee is proper to be allowed.

Fee for agents not chargeable as costs.

144. The Court may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit,

Court may grant time or adjourn hearing.

and may also, from time to time, in order to the production of further evidence, or for other sufficient reason to be recorded by the Court, adjourn the hearing of any case to such day as to it may seem fit.

145. The presiding officer may, at any stage of a case, cause a local enquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of Government, with the consent of the authority to whom such officer is subordinate, or may himself proceed to the spot and make such local enquiry in person.

Court may cause local enquiry and report, or may itself enquire.

The provisions of the law for the time being in force relative to local inquiries by Amíns or Commissioners, under orders of the civil Courts, shall apply to any local inquiry made by any officer under this section,

Provisions applied to such inquiry.

and, so far as they are applicable, to inquiries made by the presiding officer of the Court in person.

In the latter case the presiding officer, after completing the inquiry, shall record such observations as appear to him appropriate, and the observations so recorded shall form part of the proceedings in the suit.

Record in case of inquiry by Court.

146. The defendant in any suit under this Act may pay into Court such sum of money as he thinks a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and such sums shall be paid to the plaintiff.

Defendant may pay admitted debt and costs into Court.

If the defendant deposit less than the sum claimed and the plaintiff elect to proceed in the case, and ultimately recover no further sum than has been paid into Court, the plaintiff shall be charged with any costs incurred by the defendant in the suit after such payment.

Plaintiff chargeable with subsequent costs if he proceed and recover no further sum.

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

No interest to plaintiff after date of deposit by defendant.

148. When, in any suit between a landholder and a tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the tenant is disputed on the ground that some third person has actually and in good faith received and enjoyed such rent before and up to the time when the right to sue accrued, such third person may be made a party to the suit,

In suits where right to receive rent is disputed, third person who has received it may be made a party.

and the question of such receipt and enjoyment of the rent by such third person may be enquired into, and the suit shall be decided according to the result of such enquiry:

Provided that the decision of the Court shall not affect the right of either party entitled to the rent of such land to establish his title by suit in the civil Court, if instituted within one year from the date of the decision.

Saving of right to sue in civil Court to prove title to rent.

149. Whenever a decree is given for the ejectment of a tenant, or the cancelment of his lease, on account of any act or omission by which the land in his occupation has been damaged, or which is inconsistent with the purpose for which the land has been let, the Court may, if it think fit, allow him to repair such damage within one month from the date of the decree, or order him to pay such compensation, within such time, or make such other order in the case, as the Court thinks fit,

Court may allow tenant to repair damage caused by certain acts or omissions.

and if such damage be so repaired, or compensation so paid, or order obeyed, the decree shall not be executed.

150. Every judgment under this Chapter shall be pronounced in open Court.

Delivery of judgment.

151. The judgment shall be written in the mother-tongue of the presiding officer, and shall contain the reasons for the same, and shall be dated and signed by the presiding officer at the time it is pronounced:

Its language and contents.

Provided that, where his mother-tongue is not English, the judgment may be written in English, if he is able to write a clear and intelligible decision in that language.

When it may be in English.

151A. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

To direct payment of costs.

151B. Except as hereinbefore provided, the Court shall have full power to give and apportion costs of every suit in any manner it thinks fit; and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power; but if the Court directs that the costs of any suit shall not follow the event, the Court shall state its reasons in writing.

Power of Court as to costs.

151C. The Court may direct that the costs payable to one party by another shall be set off against sums admitted or found in the suit to be due from the former to the latter.

Costs may be set off.

151D. Except as hereinbefore provided, the Court may give interest at any rate not exceeding six per cent. per annum, on any sum decreed or found to be due, or on costs.

Power to give interest.

152. Every officer invested with powers under this Act may hold a Court for hearing and determining suits under this Act in any place within the limits of the district to which he is appointed.

Power to hold Court in any place within district.

Every hearing shall be in open Court, and the parties to the suit or their authorized agents shall have due notice to attend in such place.

CHAPTER VII.

PROCEDURE IN EXECUTION OF DECREES IN SUITS.

153. If the decree be for the ejectment of any tenant from land occupied by him, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree thereto.

Mode of executing decree for ejectment of tenant.

If any opposition is made to the execution of the order for giving such possession or occupancy, by the party against whom the order is made, the Magistrate, on the application of the Collector of the District or Assistant Collector, shall give effect to the same.

Magistrate to give it effect in case of opposition.

154. If the decree be for the payment of arrears of rent or revenue, or of money, and the defendant has been committed to jail, or appear in Court pursuant to the conditions of any security-bond given under

Power to order detention in, or commitment to, civil jail in certain cases.

section 121, the Collector of the District or Assistant Collector may order that he be detained in, or committed to, the civil jail, unless he immediately pays into Court the amount of the decree with costs, or otherwise complies with the terms of the decree.

155. If the judgment-debtor has given security for his appearance, and is not present when judgment is pronounced, and the surety fails to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety.

Process against surety on failure to deliver judgment-debtor into custody.

156. (*a*). A writ of execution may be issued against either the person or the property of a judgment-debtor;

Process of execution against person or property, but not both.

but process shall not be issued simultaneously against both person and property.

(*b*). Such writ may be issued on the oral application of the judgment-creditor or his agent, made at the time the decree is passed, or, thereafter, upon the written application of the judgment-creditor or his agent.

Applications on which it may issue.

(*c*). Writ of execution against the person or moveable property of a debtor shall be in the form (H) or (I) contained in the first schedule hereto annexed, or to the like effect.

Form of writ of execution.

157. Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor;

Execution against moveable property.

but, if the creditor is unable to furnish such list, he may apply for a general attachment of the debtor's effects, to the amount of the judgment and costs.

In either case, the property to be seized shall be pointed out to the officer entrusted with execution of the process, by the creditor or his agent:

Provided that no implements of husbandry, or cattle actually employed in agriculture, or tools of artisans, or necessary wearing apparel of the judgment-debtor, his wife or children, shall be attached under this section.

Articles exempted from attachment.

158. Every writ of execution shall bear date on the day on which it is signed by the Collector of the District or Assistant Collector, and shall continue in force for such period as he may direct (not being more than sixty days) calculated from such date.

Date and duration of writs.

159. Second and successive writs of execution may be issued by order of the Collector of the District or Assistant Collector on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

Second and successive writs.

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

After one year execution not to issue without notice to party concerned.

161. Execution on a judgment shall not issue against the heir or other representative of a deceased party, unless notice to appear and be heard has been previously served on such heir or other representative.

Execution not to issue against heir or representative of deceased party without notice.

162. No process of execution shall be issued on a judgment under this Act, when the application for the issue of such process is made after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred rupees;

No process of execution after three years, unless judgment be for sum exceeding 500 rupees.

in which case the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the civil Court.

Regulation of period in such case.

163. If a writ issues for taking any person in execution, the officer charged with the execution of the writ shall bring him with all convenient speed before the Collector of the District or Assistant Collector.

Procedure in execution of writ against person.

If such person does not then deposit in Court the full amount specified in the writ,

or make such arrangement for the payment of the same as is satisfactory to the judgment-creditor,

or satisfy the Collector of the District or Assistant Collector that he has no present means of paying the same amount,

the Collector of the District or Assistant Collector shall send him to the civil jail, there to remain for such time as may be directed by a warrant addressed to the keeper of the jail, unless in the meanwhile he pays the full amount for the payment of which he is liable under the decree:

Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three months when the amount decreed (exclusive of costs) does not exceed fifty rupees,

Limit of imprisonment.

or six months when such amount does not exceed five hundred rupees,

or two years in any other case.

164. (*a*.) Any person once discharged from jail shall not be imprisoned a second time under the same judgment.

No person to be imprisoned a second time under same judgment.

(*b*.) If the amount due under the decree does not exceed one hundred rupees, the Collector of the District or Assistant Collector may declare him absolved from further liability under that decree, and such liability shall thereupon be extinguished.

When further liability extinguished.

(*c*.) In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to him from attachment in execution of the same.

When not extinguished.

165. Every person applying for the issue of a warrant of arrest under section 119, or suing out process of execution against the person of any judgment-debtor, shall deposit in Court, when the warrant issues, diet-money for thirty days at such rate not exceeding two annas per diem, as the Collector of the District or Assistant Collector may direct, unless for any special reason he directs that deposit be made at a higher rate, which shall not exceed four annas per diem.

Diet-money to be deposited at time of issue of warrant.

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

Effect of non-payment of diet-money in advance during imprisonment.

167. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit,

Diet-money spent to be costs in suit.

and any diet-money not so spent shall be returned to the person who deposited the same.

Refund of remainder.

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

Procedure in executing writ against moveable property.

A copy of the said proclamation and list shall be sent to the Collector of the District or Assistant Collector, and shall be affixed in his office.

169. No moveable property taken in execution under this Act shall be sold before the expiration of ten days next after the day on which such property is so taken.

Time to elapse before sale of moveable property.

Until such sale the property shall be deposited in some fit place, or it may remain in custody of some fit person approved by the officer executing the writ.

Custody meanwhile.

The provisions of sections 74 to 78 (both inclusive), so far as the same are applicable, shall apply to sales under this section.

Provisions applied to sale.

170. No irregularity in publishing or conducting a sale of any moveable property under an execution shall vitiate such sale.

Sale not vitiated by irregularity.

But any person injured by such irregularity may recover compensation for such injury by suit in the civil Court:

Right to sue for compensation.

Provided that such suit be brought within one year from the date of sale.

Limitation.

171. In the execution of any decree for the payment of arrears of rent or revenue, or of money, under this Act, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor, except the materials of buildings actually occupied by a debtor who is an agriculturist.

In executing decrees for money when execution may be applied for against immoveable property.

172. If the immoveable property against which execution is applied for be other than a mahál, or share of a mahál, process shall be issued in the same manner as for the attachment and sale of moveable property: and the provisions of sections 168, 169 and 170 shall be applicable.

Process when the immoveable property is not a mahál.

In the event of the sale of such property being completed, possession thereof shall be given to the auction-purchaser by the Collector of the district in which such property is situate.

Possession to be given to auction-purchaser.

173. When such property is a mahál, or a share of a mahál, the decree shall be sent for execution to the Collector of the District in which such property is situate,

Procedure when it is a mahál.

and if the judgment-debtor satisfies the Collector of the District that there is reasonable ground to believe that the amount of the judgment-debt may be raised by mortgage of the property, or by letting it on lease, or by disposing by private sale of a portion of the property or any other property belonging to the judgment-debtor, the Collector of the District may, on the application of the judgment-debtor, postpone the sale for such period as the Collector of the District thinks proper to enable the judgment-debtor to raise the amount,

and if the judgment-debtor satisfies his creditor, the execution shall be stayed, and the Collector of the District shall report the fact to the Court by which the decree was made.

174. If the judgment-debtor obtaining a postponement of the sale fails to satisfy his creditor within the period so fixed, or, if the judgment-debtor does not apply for, or applies for but does not obtain, a postponement of the sale, and the Collector of the District considers that the sale of the mahál or share is inexpedient, and that satisfaction of the decree may be made by means of a temporary alienation of the property,

Procedure where judgment-debtor fails to satisfy creditor within further time, or Collector thinks sale inexpedient.

the Collector of the District shall cause an accurate rent-roll of the property to be prepared, and ascertain the annual income derivable therefrom.

If, in the opinion of the Collector of the District, such income is sufficient to pay off the judgment-debt with interest at six per cent. per annum, within any period not exceeding fifteen years from the date of the decree, he may transfer the property to the judgment-creditor, or if the judgment-creditor refuse to take it, to some other person, or he may hold it under his own management, for such period not exceeding fifteen years, as may be sufficient for the recovery of the debt with interest as aforesaid, and on such conditions as to the payment of such debt and interest as he deems expedient.

Power to transfer property to judgment-creditor.

Power to hold property under management.

Orders passed under this section and section 173 shall be subject to revision by the Commissioner of the Division and the Board, but shall not be open to appeal to the civil Court.

174A. When the property of a judgment-debtor which is transferred or held under management under section 174 includes any sír-land of such debtor, he shall, until such property is restored to him, be treated as an ex-proprietary tenant of such sír-land under section 7.

Proprietor to be treated as ex-proprietary tenant of sír-land.

175. If in the opinion of the Collector of the District the recovery of the debt under section 174 is impossible, or if the sale of the property appear to him advisable on other grounds, he shall report, through the Commissioner of the Division, the case for orders to the Board.

Report of case to Board.

176. On the receipt of such report, the Board may make, or cause to be made, such further endeavours for the recovery of the debt under the provisions of section 174, as to it may seem practicable.

Procedure on receipt of report.

177. If it appear to the Board that the debt cannot be recovered under section 174, or if the sale of the property appear to it advisable on other grounds, it shall order the property to be sold, in which case the sale shall be made under the rules in force for the sale of land for arrears of land-revenue, but without prejudice to the incumbrances (if any) to which such property may be subject.

Power to order sale of property.

178. If, before the day fixed for any sale of any property under this Act, a third party appear before the Collector of the District or Assistant Collector, and claim a right or interest to or in any of the property, he shall examine such party or his agent, according to the law for the time being in force relative to the examination of witnesses,

Examination of third party claiming interest in property.

and, if he see sufficient reason for so doing, may stay the sale of such property.

Stay of sale.

179. The Collector of the District or Assistant Collector may adjudicate upon such claim, and make such order as he thinks fit between the claimant and the plaintiff and defendant in the original suit.

Adjudication of such claims.

In trying such claim, the Collector of the District or Assistant Collector shall be guided by the rules contained in this Act, so far as they may be applicable.

Rules applied.

180. If the claimant fail to establish his right to the property taken in execution, the Collector of the District or Assistant Collector may, at the time of disposing of the case, order him to pay to the judgment-creditor the costs of the proceedings on the claim, and also such sum as the Collector or Assistant Collector thinks sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

Compensation awardable against claimant failing to establish right.

181. (*a.*) No appeal shall lie from any order passed under section 179 or section 180 by the Collector of the District.

No appeal from order under section 179 or 180.

(*b.*) But the party against whom the same is passed may institute a suit in the Civil Court to establish his right at any time within one year from the date of the order:

Right to sue in civil Court.

(*c.*) Provided that, if the order be for the sale of the property taken in execution, and the property is moveable the suit shall not be for the recovery of such property, but shall be for compensation from the judgment-creditor by whom it was brought to sale.

Proviso.

CHAPTER VIII.

APPEAL, REHEARING AND REVIEW.

(d).—From Decrees in Suits.

182. In suits under this Act, tried and decided by a Collector of a District or an Assistant Collector of the first class, his judgment shall be final.

Judgment of Collector of District or Assistant Collector of first class when final.

183. All decisions of the Assistant Collector of the second class in suits mentioned in section 93 shall be appealable to the Collector of the District, whose order thereon shall be final.

Appeal from decision of Assistant Collector of second class.

184. The petition of appeal shall be presented to the Collector of the District within thirty days from the date of the decree.

Time for presentation.

185. The Collector of the District may either dismiss the petition or may fix a day for hearing the appeal, and in that case he shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons.

Procedure on appeal.

If, on the day fixed for hearing the appeal, or any other day to which the hearing may be adjourned, the appellant does not appear in person or by an agent, the appeal may be dismissed for default.

If the appellant appears and the respondent does not appear in person or by an agent, the appeal may be heard *ex parte*.

186. If an appeal be dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Collector of the District to re-admit the appeal,

Re-admission of appeal.

and if it be proved to the satisfaction of the Collector of the District that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector of the District may re-admit the appeal.

187. After hearing the appeal, the Collector of the District shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits.

Judgment in appeal.

188. In suits in which the judgment of the Collector of the District or Assistant Collector is final, as provided in section 182, he may, upon the application of either party, if preferred within thirty days from the date of the decision, order the rehearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case, which the applicant had no knowledge of, or could not produce, at the time of trial.

Rehearing of suits not open to appeal.

189. Notwithstanding anything contained, in sections 182 and 183 an appeal shall lie to the District Judge from the decision of the Collector of the District or Assistant Collector of the first class, in all suits mentioned in section 93,

Appeal to District Judge.

in which the amount or value of the subject-matter exceeds one hundred rupees, or

in which the proprietary title to land has been determined between parties making conflicting claims thereto:

Provided that, where the amount or value of the subject-matter of the suits exceeds five thousand rupees, the appeal shall lie to the High Court.

Appeal to High Court.

190. The rules for the time being in force in regard to the time within which appeals from the decisions of civil Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the District Judge or High Court under this Act.

Rules as to time of presentation, &c., to apply.

191. The decisions of District Judges passed in regular appeal under this Act shall be open to special appeal to the High Court, in the same manner, and subject to the same rules, as the decisions of District Judges passed in regular appeal are open to special appeal under the Code of Civil Procedure and the Indian Limitation Act, 1877.

Special appeal to High Court from District Judge.

(B).—From Orders on Applications or relating to the Execution of Decrees.

(1) Assistant Collectors of the Second Class.

192. An appeal to the Collector of the District shall lie from all orders passed under this Act by an Assistant Collector of the second class.

Appeal from Assistant Collector of second class.

(2) Assistant Collectors of the First Class.

193. An appeal to the Commissioner of the Division shall lie from all orders passed by an Assistant Collector of the first class,

Appeal from orders of Assistant Collectors of first class on certain applications.

(*a*) on applications under section 99, where the amount or value of the subject-matter exceeds one hundred rupees,

(*b*) on applications under section 100.

194. An appeal to the Collector of the District shall lie from all other orders passed under this Act by an Assistant Collector of the first class, except—

Appeal from other orders of Assistant Collector of first class.

(*a*) orders on applications mentioned in section 98;

(*b*) orders on applications mentioned in section 99;

(*c*) orders passed in the course of a suit and relating to the trial thereof.

195. The orders of an Assistant Collector of the first class on the following applications shall be final, subject to revision by the Commissioner of the Division or the Board—

Final orders of Assistant Collector of first class.

(*a*) applications mentioned in section 98;

(*b*) applications mentioned in section 99 where the amount or value of the subject-matter does not exceed one hundred rupees.

(3) Collector of the District.

196. An appeal to the Commissioner of the Division shall lie from orders passed by the Collector of the District,

Appeal from certain orders of Collector of District.

(*a*) under section 99, when the amount or value of the subject-matter exceeds one hundred rupees,

(*b*) under section 100.

In all other cases orders under this Act passed by the Collector of the District shall be final, subject to revision by the Commissioner of the Division or the Board.

(4) Commissioner of the Division.

197. Save as provided by section 198, the orders of the Commissioner of the Division on appeals shall be final, subject to revision by the Board.

Finality of orders of Commissioner of Division.

198. An appeal from the decisions of the Commissioner of Division on appeals against orders passed by the Collector of the District or Assistant Collector on the applications mentioned in section 100 shall lie to the Board, except where the Commissioner of the Division dismisses the appeal.

Appeal to Board from his decisions on appeals against orders on applications mentioned in section 100.

In such case the provisions of section 199 shall apply.

199. The Board may at any time call for any case (other than a suit mentioned in section 189) which has come before any Commissioner of a Division, or any Court subordinate to him, and pass such orders thereon, consistent with this Act, as the Board thinks fit.

Power of Board to call for cases and pass orders thereon.

200. No appeal shall be brought to the Collector of the District after the expiration of thirty days, or to the Commissioner of the Division after the expiration of sixty days, or to the Board of Revenue after ninety days, from the date of the order complained of.

Time for appealing.

201. Any appeal under this Act may be admitted after the period of limitation prescribed therefor when the appellant satisfies the officer to whom he appeals that he had sufficient cause for not presenting the appeal within such period.

Admission of appeals after prescribed period.

No appeal shall lie against an order under this section admitting an appeal.

(5) Review.

201A. The Board may review and may rescind, alter or confirm any order made by itself, or by a single member, on the application of one of the parties to the case, if preferred within ninety days from the passing of the order.

Power of Board to review its orders.

201B. In the case of any application in which the order of the Commissioner, Collector of the District or Assistant Collector is final, as provided in sections 195, 196 and 197, such Commissioner, Collector or Assistant Collector, as the case may be, may, upon the petition of either party, if presented within thirty days from the date of the decision, review his order upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of or could not produce at the time of trial.

Reviewing of applications not open to appeal.

CHAPTER IX.

MISCELLANEOUS.

202. In computing the period of limitation prescribed for any suit under this Act, the day on which the right to sue accrued shall be excluded.

Time to be excluded in computing limitation period.

In computing the period of limitation prescribed for any appeal under this Act, the day on which the judgment or order complained of was pronounced, and the time requisite for obtaining a copy of the decree or order appealed against, shall be excluded.

203. Whenever a Court is closed on the last day of any period provided in this Act for the presentation of any memorandum of appeal, or for the deposit or payment of any money in or into court, the day on which the Court re-opens shall be deemed to be such last day.

Rule as to last day for presentation or deposit, when Court is closed on such day.

204. (*a.*) If in any suit instituted, or on any application made, under this Act, it appears to the presiding officer that any question in issue involving a point of law is more proper for the decision of a civil Court, such officer, if a Collector of a District, or the Collector of the District on the representation of such officer, may cause a case to be stated for the opinion of the District Judge, who shall hear the case in such manner as nearly as may be as is prescribed for the hearing of cases by the High Court by section 619 of the Code of Civil Procedure.

Power to state case involving point of law for opinion of District Judge.

(*b.*) If the District Judge finds that the case is insufficiently stated, he may return it to the Collector of the District for amendment.

(*c.*) Subject to any limits of value or time provided by law for cases falling under the Code of Civil Procedure, an appeal shall lie from the judgment of the District Judge to the High Court.

(*d.*) The District Judge shall return the case with the opinion of the civil Court to the Collector of the District, and the revenue Courts shall decide the suit or application in accordance with such opinion.

(*e.*) The costs attending such case shall be dealt with as costs in the suit or on the application in the revenue Court.

205. (*a.*) If in any suit instituted, or on any appeal presented, in a civil or revenue Court, the Judge or presiding officer doubts whether he is precluded by this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.

Power to refer to High Court questions as to jurisdiction.

(*b.*) On any such reference being made, the High Court may order the Judge or presiding officer, either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

(*c.*) The order of the High Court on any such reference shall be final, and shall not be questioned by the same parties in the same suit.

206. In all suits instituted in any civil or revenue Court, in which an appeal lies to the District Judge or High Court, an objection that the suit was instituted in the wrong Court shall not be entertained by the appellate Court, unless such objection was taken in the Court of first instance; but the appellate Court shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where objection that suit was instituted in wrong Court was not taken in Court of first instance.

207. If in any such suit such objection was taken in the Court of first instance, but the appellate Court has before it all the materials necessary for the determination of the suit, it shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where such objection was taken in Court of first instance.

208. If in any such suit the appellate Court has not before it the materials necessary for the determination of the suit, it shall proceed under the provisions of the Code of Civil Procedure relating to appeals; but if it remands the suit, or frames and refers issues for trial, or requires additional evidence to be taken by the Court of first instance, it may direct its order either to the Court in which the suit was instituted, or to any other Court competent to entertain the suit,

Procedure where, in such cases, the appellate Court has not materials for determining the suit.

and the objection that the order of a subordinate appellate Court has been directed to a Court which was not competent to entertain the suit shall not be taken on special appeal.

208A. If, in any suit or application pending before a Revenue Court exercising original, appellate or revisional jurisdiction under this Act, it appears to such Court that any question in issue is more proper for decision by a civil Court, such Revenue Court may, by order in writing, require any party to such suit or application to institute, within such time as it may appoint in this behalf, a suit in the civil Court with a view to obtaining a decision of such question; and, if he fails to comply with such requisition, shall decide such question against him.

Power to refer party to civil Court.

If he institutes such suit, the Revenue Court shall dispose of the suit or application pending before it in accordance with the final decision of the civil Court of first instance or appeal (as the case may be) upon such question.

Suits by co-sharer against lambardár for share of profits.

209. In any suit brought by a co-sharer against a lambardár for a share of the profits, the Court may award to the plaintiff not only a share of the profits actually collected, but also a sum equal to the plaintiff's share in the profits which, through gross negligence or misconduct, the lambardár has omitted to collect.

Tenant's power to implead persons claiming through landholder.

210. In any application made by a tenant against a landholder to recover possession of a holding, the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the landholder.

Landholder's power to implead persons claiming through tenant.

In any suit instituted, or application made, by a landholder to eject a tenant, the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the tenant.

Power of Local Government to make rules.

211. The Local Government may from time to time make rules consistent with this Act—

(*a*) for the guidance of officers in determining, under sections 13, 14, 15, 17, 18 and 20, the rent payable by tenants,

(*b*) for the guidance of officers assessing rent under section 30,

(*c*) as to the dates on which instalments of rent shall fall due,

(*d*) as to the procedure to be followed on all applications under section 95.

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

Power of Board to make rules.

The Board, with the previous sanction of the Local Government, may from time to time make rules, consistent with the provisions herein contained, for the guidance of all persons in matters connected with the enforcement of this Act.

Instalments when to be deemed in arrear.

212. When the Local Government has made a rule fixing the date on which any instalment of rent shall fall due, no such instalment shall, for the purposes of this Act, be deemed to be in arrear unless it remains unpaid after the date fixed by such rule.

THE FIRST SCHEDULE.

FORM A. (*See Section 51.*)

I, *A. B.*, of , solemnly declare that I did personally [*or* by my agent *C. D.*], on the day of , tender payment to *E. F.* of the sum of Rs. as and for the whole amount due from me on account of rent from the month of to the month of both inclusive. I further declare that the said *E. F.* refused to accept the sum so tendered, and to give a receipt in full for the same, 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 I owe the said *E. F.*, and I hereby apply for leave to pay the same accordingly.

FORM B. (*See Section 52.*)

Court of the Collector of , *dated the day of*

To *E. F.* &c.

WITH reference to the written declaration of *A. B.*, 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 to your duly authorized agent, on application.

[This is to be written on a copy of the declaration in Form A made by the person paying the money into Court.]

FORM C. (*See Section 69.*)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of distrained property. Commissioner for sale of

A. B., Distrainer.

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

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

Dated this day of 188 .

FORM D. (*See Section 114.*)

FORM OF SUMMONS TO DEFENDANT.

No. (*of suit*) dated

In the Court of

A. B., Plaintiff.

[*Name, description and address of plaintiff.*]

C. D., Defendant.

[*Name, description and address of Defendant.*]

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

FORM E. (*See section 119.*)

FORM OF WARRANT OF ARREST.

No. (*of suit*) dated

In the Court of

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

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

Dated this day of 188 .

FORM F. (*See section 119.*)

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of

A. B., Plaintiff.

[*Name, description and address of plaintiff.*]

C. D., Defendant.

[*Name, description and address of defendant.*]

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

FORM G. (*See section 121.*)

FORM OF SECURITY-BOND FOR APPEARANCE OF DEFENDANT.

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

FORM H. (*See section 156.*)

WRIT OF EXECUTION AGAINST THE PERSON.

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS the said *C. D.* was directed by a decree of this Court, under date the day of 188 , to pay to *A. B.* the sum of and for costs of suit, amounting to , and whereas the said *C. D.* has omitted to pay the same, you are hereby commanded to apprehend the said *C. D.*, and to bring him with all convenient speed before this Court to be dealt with according to law.

FORM I. (*See section 156.*)

WRIT OF EXECUTION AGAINST THE EFFECTS.

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS *C. D.* was directed by a decree of this Court, under date the day of 188 , to pay to *A. B.* the sum of and for costs of suit, amounting to , and whereas the said *C. D.* has omitted to pay the same, you are hereby commanded to levy the said sum of , and the sum of for costs of executing this process, by seizure and sale of such moveable property of the said *C. D.* as (is described in the list annexed and) [*if no list is furnished, these words to be omitted*] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said *C. D.*, on some convenient day, not being less than ten nor more than fifteen days from the day of seizure, unless the amount leviable as aforesaid shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

THE SECOND SCHEDULE.

(*See section 1.*)

TERRITORIES EXEMPTED, IN THE FIRST INSTANCE, FROM THE OPERATION OF THE ACT.

I. The province of Kumaon and Garhwál.

II. The Tarai Parganas, comprising—Bázpúr, Káshípúr, Jaspúr, Rudarpúr, Gadarpúr, Kilpúrí, Nának-Mattha, and Bilheri.

III. The portion of the Mirzápúr District lying to the South of the Kaimor Range.

IV. The Family Domains of the Mahárájá of Benares comprising the following parganas:—
Bhadohi and Kera Mangror in the Mirzapur District,
Kaswár Rájá in the Benares District.

V. The tract of country known as Jaunsar Báwar in the Dehra Dún District.

D. FITZPATRICK,

Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 11th March, 1881, and is hereby promulgated for general information :—

ACT No. XIII OF 1881.

An Act to provide for the better government of Fort William.

Preamble.

WHEREAS it is expedient to give power to make rules for the better government of Fort William in Bengal and to provide for the establishment of a Court within the said Fort for the trial of persons charged with breaches of such rules; It is hereby enacted as follows :—

Short title.

Commencement.

1. This Act may be called "The Fort William Act, 1881;" and it shall come into force on the first day of April, 1881.

But nothing herein contained shall be deemed to confer jurisdiction over any persons (other than artificers, labourers, sutlers and followers) to whom the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, 1869, is or are applicable.

"The Fort."

2. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, define, for the purposes of this Act, the limits of Fort William in Bengal; and in this Act the expression "the Fort" means the area so defined.

Commander-in-Chief may make rules.

3. The Commander-in-Chief in India may, from time to time, with the sanction of the Governor General in Council, make rules, to be in force within the Fort, in regard to the matters specified in the schedule hereto annexed, and other matters of a like nature, and may by such rules prescribe, as penalties for the infringement thereof, fine which may extend to fifty rupees, or imprisonment for a term which may extend to four days, or both.

When a sentence of fine is passed under any such rule, the term for which the Court directs the offender to be imprisoned in default of payment of such fine may extend to, and shall not exceed, four days.

When any rule is made under this section, a copy thereof, in English and such other languages as the Governor General in Council may from time to time direct, shall be exhibited in such conspicuous places within the Fort as the officer commanding the Fort may from time to time direct.

Governor General in Council may invest officer with power to try breaches of rules.

4. The Governor General in Council may invest any commissioned officer in Her Majesty's Army with power to try persons charged with any infringement of the rules made under section three.

The officer so invested is hereinafter called the Fort Magistrate.

Procedure to be followed.

5. In all cases under this Act, the Fort Magistrate shall, except as herein otherwise provided, exercise within the Fort the powers, and, as nearly as may be, follow the procedure, conferred on, and prescribed for, a Presidency Magistrate by the Presidency Magistrates Act, 1877; and, subject to the power conferred by the High Courts Criminal Procedure Act, 1875, section 147, every finding, sentence or order of such Magistrate under this Act shall be final.

Power to arrest without warrant.

6. Any Police-officer, or any other person empowered in this behalf by the Governor General in Council, by name or as a member of a specified class, may arrest without warrant any person who in his sight commits an offence punishable under this Act.

Power to Police-officer to release on bail.

Every person so arrested shall be taken to the police-station within the Fort, and shall be detained there until he gives to the Police-officer in charge of such station a bond, with or without sureties, as such officer may require, for a sum not exceeding one hundred rupees, to appear before the Fort Magistrate at a time to be specified in such bond, or until he can be brought before such Magistrate.

Jurisdiction of Presidency Magistrates and prosecutions under other laws saved.

7. Nothing in this Act or in any rule made hereunder shall affect the jurisdiction of the Magistrates appointed under the Presidency Magistrates Act, 1877, or shall prevent any person from being prosecuted under any other law for any offence punishable under this Act, or from being liable to any other punishment than is provided for such offence by this Act: Provided that no person shall be punished twice for the same offence.

Limitation of time for prosecutions under Act.

8. No prosecution for any offence under this Act shall be commenced after the expiration of three months next after such offence has been committed.

9. All penalties heretofore imposed by the Garrison Quarter Master of the Fort for offences against garrison rules and regulations shall be deemed to have been imposed in accordance with law.

Validation of penalties heretofore imposed by Garrison Quarter Master.

THE SCHEDULE.

(*See section 3.*)

(1). Throwing dirt or rubbish of any description into the drains or roads or anywhere but in the appointed places.

(2). Removing night-soil without a covering or at unauthorized hours.

(3). Camp-followers, servants and others not keeping the godowns they live in clean.

(4). Performing offices of nature in other than the appointed places.

(5). Bathing, or washing clothes or animals, in the *cuvette* or other unauthorized places.

(6). Selling unwholesome articles of food, grain or drinks.

(7). Adulterating food or drinks.

(8). Making evacuations in unauthorized places.

(9). Rash or negligent driving.

(10). Picketting, training or breaking in animals.

(11). Causing obstruction by vehicles on the road.

(12). Exposing or hawking articles for sale about the roads and barracks, or within the Fort, without a Fort pass.

(13). Beating drums or tom-toms.

(14). Damaging lamps, posts, masonry or other Government-property in any part of the Fort.

(15). Disorderly behaviour in the public thoroughfares.

(16). Gambling.

(17). Spitting pán on any of the public staircases, gateways, walls and verandahs, or defacing in any way the walls of barracks, buildings or gateways.

(18). Throwing slops into the drains.

(19). Washing cooking-pots at the water-taps and wasting water.

(20). Cooking in unauthorized places.

(21). Hanging clothes to dry on the guns or masonry-work.

(22). Laying out clothes, accoutrements or stable-bedding after the authorized hours.

(23). Destroying the trees, bushes or plants, or climbing trees.

(24). Servants smoking hookahs in their masters' quarters or cook-houses, or keeping such quarters or cook-houses in an insanitary state.

(25). Trespassing on parade-grounds, or making footpaths across the grass-plots.

(26). Being drunk and incapable.

(27). Fighting, quarrelling and creating a disturbance, or making unnecessary noise of any kind.

(28). Affixing bills and papers on any walls in the Fort.

(29). Cutting grass or interfering with the grass-contractor.

(30). Declining to show a tin pass when called upon to do so.

(31). Being found in the garrison without a tin pass, or being in possession of a ticket belonging to another.

(32). Driving vehicles without lights or with insufficiently greased wheels.

(33). Swinging or sitting on the chain-fences.

(34). Interfering in any way with the guns, carriages or piles of shot and shell on the works, or with the packed ordnance.

(35). Mounting the ramparts or parapets or entering the embrasures without authority.

(36). Smuggling liquor into the Fort.

(37). Burning stable-litter or lighting fires except in authorized places and at authorized hours.

(38). Carrying lights except in closed lanterns, or letting off fireworks.

(39). Removing property of any kind or description from the Fort without written authority.

(40). Allowing animals of any sort to stray into the Fort, or to graze within the same.

(41). Slaughtering animals or exposing carcasses or offal within the Fort.

(42). Keeping dogs or poultry in unauthorized places.

(43). Buying, selling or receiving any portion of a soldier's kit.

(44). Disobedience of lawful authority in failing to attend to authorized instructions of the police or of the several sentries posted throughout the Fort.

(45). Occupying buildings of any kind without proper allotment.

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 11th March, 1881, and is hereby promulgated for general information:—

ACT No. XIV OF 1881.

An Act to amend Bengal Regulation VII of 1828.

WHEREAS it is expedient to amend Bengal Regulation VII of 1828 (*for amending the Provisions of Regulation XV of 1795, and for defining the Authority of the Rajah of Benares in the Mahâls therein referred to*) in manner hereinafter appearing; It is hereby enacted as follows:—

Preamble.

1. This Act may be called "The Benares Family Domains Act, 1881": And it shall come into force on such day as the Lieutenant-Governor of the North-Western Provinces may, by notification in the official Gazette, appoint in this behalf.

Short title.

Commencement of Act.

2. The following portions of Bengal Regulation VII of 1828 shall be repealed, namely:—

Repeal of certain portions of Bengal Regulation VII of 1828.

(*a*) in section 5, the words and figures "under the rules contained in Regulation XLI, 1795";

(*b*) in section 14, the words "under the Regulations," in both places in which they occur;

(*c*) in section 19, the words "before the Court of circuit";

(*d*) in section 20, the proviso.

New section substituted for section 3 of same Regulation.

3. In the same Regulation, for section 3, the following shall be substituted, namely:—

"3. The superintendence of the said mahâls shall be vested in the Commissioner of the Benares Division, hereinafter called 'the Superintendent.'

Superintendence of mahâls vested in Commissioner.

"The Lieutenant-Governor of the North-Western Provinces may, from time to time, appoint a Deputy Superintendent of the said mahâls, and confer upon him all or any of the powers of the Superintendent, to be exercised by him subject to the general control of the Superintendent."

4. In the same Regulation, section 7, for the last twenty-two words, the following shall be substituted, namely:—

Amendment of same Regulation, section 7.

"The orders thus passed by the Superintendent shall be subject to appeal to, and revision by, the Board of Revenue, whose order thereon shall be final, unless altered or set aside by the said Lieutenant-Governor."

5. In the same Regulation, section 9, for the words "the Regulations at present in force within the Province of Benares" the words "the enactments for the time being in force in the North-Western Provinces" shall be substituted, and after the word "applicable" the words "and the Local Government with the concurrence of the Mahárájá may direct" shall be inserted.

Amendment of same Regulation, section 9.

6. To section 10 of the same Regulation the following clause shall be added, namely:—

Clause added to section 10 of same Regulation.

"The Mahárájá may delegate to one or more of his officers the exercise of all or any of the powers vested in him under this section in the whole or any part of the said mahâls."

7. In the same Regulation, section 11, for the words and figures "Regulation XI, 1822," the words "the enactments for the time being in force in the North-Western Provinces" shall be substituted.

Amendment of same Regulation, section 11.

8. In the same Regulation, section 12, for the words "Boards of Revenue" the words "Commissioners of Divisions and the Board of Revenue" shall be substituted;

Amendment of same Regulation, section 12.

and, for the words "towards the Board" the words "towards the Commissioner" shall be substituted.

9. In the same Regulation, section 13, for the words "Governor General in Council" the words "Board of Revenue" shall be substituted.

Amendment of same Regulation, section 13.

10. In the same Regulation, section 16, for the words "a Native Commissioner shall be maintained by the Rajah in each of the pergunnahs referred to in Regulation XV, 1795," the following shall be substituted, namely:—"A Native Commissioner, or two or three Native Commissioners, as the said Lieutenant-Governor may, from time to time, direct, shall be maintained by the Mahárájá."

Amendment of, and addition to, same Regulation, section 16.

And to the same section the following shall be added, namely :—

"The local limits of the jurisdiction of the Native Commissioners shall be determined by the Mahárájá, and may be altered by him from time to time."

11. In the same Regulation, section 21, for the words and figures "contained in Regulation XXIII of 1814" to the end of the section, the following shall be substituted, namely :—"prescribed by the said Lieutenant-Governor under section 22 of this Regulation."

Amendment of same Regulation, section 21.

12. For sections 22 to 26, both inclusive, of the same Regulation, the following sections shall be substituted, that is to say :—

Sections substituted for sections 22 to 26 of same Regulation.

"22. The said Lieutenant-Governor may, from time to time, make rules consistent with this Regulation—

Power to make rules.

"(*a*) to regulate the procedure and powers of the Native Commissioners, and to determine the cases in which, the mode in which, and the authority to or by which, the orders and decisions of such Commissioners shall be subject to appeal or revision, and

"(*b*) to regulate, in matters not hereinbefore provided for, the administration of the Family Domains in so far as it is entrusted to the Mahárájá;

"such rules shall, when published in the local Gazette, have the force of law:

"Provided that no such rule shall be so published until the opinion of the Mahárájá thereon has been taken and considered by the Lieutenant-Governor.

"In matters not otherwise provided for by the rules made under clause (*a*), the Code of Civil Procedure shall apply.

"23. If, in any suit instituted or appeal presented under this Regulation in any Court, the Judge or presiding officer doubts whether he has jurisdiction, he may refer the matter to the Board of Revenue; and, on any such reference being made, the said Board may order the Judge or presiding officer either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

Procedure in case of doubt as to Judge's jurisdiction.

"The order of the said Board on any such reference shall be final.

"24. Except as provided by or under this Regulation, or any other enactment for the time being in force,

Operation of general Acts.

"(*a*) the administration of the Family Domains, in so far as it is entrusted to the Mahárájá, shall be regulated by the principles and spirit of the enactments for the time being in force in the North-Western Provinces, and

"(*b*) the administration of the said Domains, in so far as it has not been so entrusted, shall be regulated by those enactments.

"25. In this Regulation, unless there is something repugnant in the subject or context,—

Interpretation-clause.

"'Board of Revenue' means the Board of Revenue of the North-Western Provinces, or such officer or officers as may hereafter be lawfully appointed to exercise, within the Province of Benares, the powers of such Board.

'Board of Revenue:'

"'Regulations' includes Acts for the time being in force in the North-Western Provinces."

'Regulations.'

13. All orders heretofore passed by the Governor General in Council, or the Lieutenant-Governor of the North-Western Provinces, or any other authority, regarding revisions of settlement or other matters connected with the revenue-administration of the tracts of territory mentioned in the preamble to Bengal Regulation VII of 1828, shall be deemed to have been passed in accordance with law; and no order or decision purporting to have been passed by any civil or revenue authority under the provisions of that Regulation shall be called in question in any Court.

Validation of past orders, &c.

14. In the Scheduled Districts Act, 1874, first schedule, Part IV, and in the Laws Local Extent Act, 1874, sixth schedule, Part IV, the following shall be repealed, that is to say :—

Parts of Acts XIV and XV of 1874 repealed.

"V. The Family Domains of the Mahárájá of Benares comprising the following parganas :—

"Bhadohi and Kheyra Mángror in the Mirzapur District.

"Kaswá Rájá in the Benares District."

15. In the Laws Local Extent Act, 1874, section 8, after clause (*j*), the following shall be inserted, namely :—

Clause added to Act XV of 1874, s. 8.

"(*jj*) extend to Pargana Bhadohi or Pargana Kera Mangror in the Mirzapur District, or to Pargana Kaswar Rájá in the Benares District, any law not now in force therein."

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th March, 1881, and is hereby promulgated for general information :—

ACT NO. XV OF 1881.

THE FACTORIES ACT, 1881.

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   Commencement.
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4. Powers of Inspector.
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6. Age of employment.
7. Hours of employment for children.
8. Child to be allowed holidays.
9. Not to be employed in two factories on same day.
10. Not to be engaged in certain dangerous work.
11. Register of children in a factory.

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15. Penalties.
    Only one penalty for same kind of offence on one day.
16. Burden of proof as to age.
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17. Occupier primarily liable for breaches of Act.

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18. Power to make rules.
19. Crown factories.

An Act to regulate labour in Factories.

WHEREAS it is expedient to regulate labour in factories; It is hereby enacted as follows :—

Preamble.

Preliminary.

1. This Act may be called "The Indian Factories Act, 1881."

Short title.

It applies to the whole of British India, and shall come into force on the first day of July, 1881.

Local extent.
Commencement.

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

Interpretation-clause.

"factory" means any premises (other than indigo-factories or premises situated on, and used solely for the purposes of, a tea or coffee plantation) wherein is carried on, for not less than four months in the whole in any one year, any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale, any article or part of an article; and

"factory:"

(*a*) wherein steam, water or other mechanical power is used in aid of any such process; and

(*b*) wherein not less than one hundred persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process; and

every part of a factory shall be deemed to be a factory, except any part used exclusively as a dwelling :

"child" means a person under the age of twelve years :

"child."

"mill-gearing" includes every shaft, whether upright, oblique or horizontal, and every wheel, drum, pulley, rope, driving strap or band, by which the motion of the first moving power is communicated to any machine :

"mill-gearing:"

a child who works in a factory, whether for wages or not, either in a manufacturing process or handicraft, or in cleaning any part of the factory used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall be deemed to be employed therein within the meaning of this Act.

"employed."

Inspectors and certifying Surgeons.

3. The Local Government may in its discretion, by notification in the official Gazette, appoint such persons as it thinks fit to be Inspectors of factories within such local limits as it may assign to such Inspectors, and may suspend or dismiss any person so appointed.

Inspectors.

In default of such appointment, the Magistrate of the district shall, in virtue of his office, be Inspector of all factories (if any) in the District.

Such Inspectors shall be deemed public servants within the meaning of the Indian Penal Code; and shall be officially subordinate to such authority as the Local Government may, from time to time, indicate in this behalf.

4. An Inspector of factories may, within the local limits for which he is appointed,

Powers of Inspector.

(*a*) enter, with such assistants (if any) as he thinks fit, any factory whenever he has reason to believe that any person is employed therein;

(*b*) make such examination of the premises and machinery, and of the registers hereinafter prescribed, and take on the spot or otherwise such evidence of any person as such Inspector may deem necessary for carrying out the provisions of this Act;

(*c*) order that any person shall not be employed in a factory when he has reason to believe that such employment would be in contravention of this Act—

until the age of such person has been certified, in the manner hereinafter provided, to be above seven years; or,

for more than the time allowed by this Act for the employment of children, until his age has been so certified to be above twelve years.

5. The Civil Surgeon or such other person practising medicine or surgery as the Local Government may, from time to time, appoint in this behalf for any local area (hereinafter called the certifying surgeon) shall, at the request of any person employed or desirous of being employed in a factory situate in such local area, or of the parent or guardian of such person, examine such person and grant him a certificate, stating whether his age, as nearly as it can be ascertained from such examination, is above or below seven years, or twelve years, as the case may be.

Certifying surgeons.

Children.

6. No child shall be employed in any factory, if he is under the age of seven years.

Age of employment.

7. No child shall be actually employed in any factory more than nine hours in any one day.

Hours of employment for children.

And no child shall be employed in any factory on any day without an interval, or intervals, amounting in the whole to at least an hour, being allowed to him for food and rest.

The times at which such intervals shall be allowed, and the length of each interval, shall be fixed by the Local Government for each factory, after ascertaining, as far as possible, the existing practice in such factory and the wishes of the occupier thereof.

The occupier shall set up and maintain, in some conspicuous place in the factory, a printed or written notice, in English and the languages of the District in which the factory is situate, showing the times at which such intervals shall be allowed and the length of each interval.

A child shall not be deemed to be employed within the meaning of the first clause of this section during any interval allowed for food or rest.

8. Every occupier of a factory in which children are employed shall, before the beginning of each month, fix not less than four days in such month on which no child shall be employed in such factory, and shall forthwith give notice of the days so fixed to such officer as the Local Government may, from time to time, appoint in this behalf.

Child to be allowed holidays.

An occupier of a factory may, with the previous sanction of the Inspector, substitute, for any day fixed under this section, another day in the same month.

No child shall be employed in such factory on a day fixed under this section, unless when another day has been substituted for such day as hereinbefore provided, in which event no child shall be employed in such factory on the day so substituted.

9. No occupier of a factory shall employ therein on any day any child who has to his knowledge already been employed on the same day in any other factory.

Not to be employed in two factories on same day.

10. No occupier of a factory shall allow any child to clean any part of the mill-gearing or machinery of such factory while the same is in motion, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of the steam-engine, water-wheel or other mechanical power, as the case may be.

Not to be engaged in certain dangerous work.

11. The Local Government may direct any occupier of a factory to keep, in such form and with such particulars as such Government may, from time to time, prescribe, registers of the children (if any) employed in such factory, and of their respective employments.

Register of children in a factory.

Fencing.

12 (*a*). Every fly-wheel directly connected with a steam-engine, or water-wheel or other mechanical power in any part of a factory, and every part of a steam-engine or water-wheel,

Fencing.

(*b*) every hoist or teagle near which any person is liable to pass or be employed, and

(*c*) every other part of the machinery or mill-gearing of a factory which may, in the opinion of the local Inspector, be dangerous if left unfenced, and which he may have ordered to be fenced,

shall, while the same is in motion, be kept by the occupier of such factory securely fenced.

Any order under clause (*c*) may be set aside, on appeal or otherwise, by the Local Government or such authority as it may appoint in this behalf.

Notices.

13. When any accident occurs in a factory causing death or bodily injury whereby the person injured is prevented from returning to his work in the factory during forty-eight hours after the occurrence of the accident, the occupier of such factory, or, in his absence, his principal agent in the management of such factory, shall send such notice of such accident to such authorities in such form and within such time as the Local Government may, from time to time, by rule, direct.

Notice to be given of accidents.

14. Every person shall, within one month after he begins to occupy a factory, send to the local Inspector a written notice containing the name of the factory, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work performed in such factory, the nature and amount of the moving power therein, and the name of the person (if any) under whom the business of the factory is to be carried on.

Person beginning to occupy factory to give notice.

Penalties.

15. Any person who, in breach of this Act, or of any order or rule made hereunder—

Penalties.

(*a*) employs any child in any factory;

(*b*) neglects to set up or maintain the notice required by section seven or to fix the days referred to in section eight;

(*c*) allows any child to perform the work forbidden by, or to work in contravention of, section ten;

(*d*) neglects to keep a register in manner prescribed under section eleven;

(*e*) neglects to fence any machinery or mill-gearing in any factory; or

(*f*) neglects to give any notice,

shall be punished with fine which may extend to two hundred rupees:

Provided that—

1st, no prosecution under this section shall be instituted except by, or with the previous sanction of, the local Inspector; and

2nd, no person shall be liable under this section to more than one penalty for any one description of offence committed on the same day, except where two or more children are employed contrary to the provisions of this Act, in which case one penalty may be imposed in respect of each child so employed.

Only one penalty for same kind of offence on one day.

16. Where an act or omission would, if a person were under seven or twelve years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age.

Burden of proof as to age.

A declaration in writing by a certifying Surgeon that he has personally examined a person employed in a factory, and believes him to be under or over the age set forth in such declaration, shall, for the purposes of this Act, be admissible as evidence of the age of that person.

Certifying Surgeon's declaration in writing.

17. Every occupier of a factory shall be deemed primarily liable for any breach therein of the provisions of this Act; but he may discharge himself from such liability by proof to the satisfaction of the local Inspector, before prosecution therefor, that such breach was committed by some other person without his knowledge or consent; and the person committing such breach shall be liable therefor.

Occupier primarily liable for breaches of Act.

Miscellaneous.

18. The Local Government may, from time to time, make rules consistent with this Act to provide for—

Power to make rules.

(*a*) the fencing of machinery and mill-gearing in factories;

(*b*) the inspection of factories;

(*c*) the manner in which appeals under this Act shall be presented and heard; and

(*d*) otherwise carrying out the provisions of this Act.

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

19. This Act shall apply to factories belonging to the Crown; provided that, in case of any public emergency, the Governor General in Council or the Local Government may, by an order in writing, exempt any such factory from this Act to such extent and during such period as the Governor General in Council or the Local Government, as the case may be, thinks fit.

Crown factories.

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th March, 1881, and is hereby promulgated for general information:—

ACT No. XVI OF 1881.

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

Preamble.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Obstructions in Fairways Act, 1881;" and it shall come into force at once.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty or by the Secretary of State for India in Council.

Local Government empowered to remove or destroy obstruction in fairway.

2. Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded or abandoned or any fishing-stake, timber or other thing is placed or left, the Local Government of the part of British India in which such port is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,

(*a*) cause such thing or any part thereof to be removed; or,

(*b*) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, cause the same or any part thereof to be destroyed.

Government entitled to expenses incurred in removing obstruction.

3. Whenever anything is removed under section two, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Dispute concerning such expenses.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the Magistrate of the District or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

Notice of removal to be given by Local Government.

4. The Local Government shall, whenever anything is removed under section two, publish in the local official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

Things removed may, in certain cases, be sold.

5. If after publishing such notification, such thing is unclaimed, or

if the person claiming the same fails to pay the amount due for the said expense and any customs duties or other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

Proceeds how applied.

6. On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Provided that he makes the claim within one year from the date of the sale.

"Vessel" to include tackle, cargo, &c.

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel, and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

Power to make rules to regulate and prohibit the placing of obstructions in fairways.

8. The Governor General in Council may from time to time, by notification in the *Gazette of India*, make rules to regulate or prohibit in any fairway leading to a port in British India, the placing of fishing-stakes, the casting or

throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause, or be likely to cause, obstruction or danger to navigation.

Penalty for breach of such rules.

9. Whoever is guilty of any act or omission in contravention of the rules made under section eight, may be tried for such offence in any district or Presidency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Compensation payable in certain cases for damage caused under this Act.

10. Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section two, or its creation is regulated or prohibited under section eight, any person having a right to maintain or create such obstruction shall be entitled to receive from the Secretary of State for India in Council reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the Presidency-town or district in which the port to which such fairway leads is situate.

Certain action of the Government previous to passing of this Act to be deemed to have been taken hereunder.

11. Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Governor General in Council or a Local Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

Saving of other powers possessed by Government.

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 26, 1881.

☞ **Separate paging is given to this Part in order that it may be filed as a separate compilation.**

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 11th March 1881, and is hereby promulgated for general information:—

ACT NO. XII OF 1881.

THE NORTH-WESTERN PROVINCES RENT ACT, 1881.

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FIRST SCHEDULE.—FORMS.

SECOND SCHEDULE.—TERRITORIES EXEMPTED, IN THE FIRST INSTANCE, FROM THE OPERATION OF THE ACT.

An Act to amend the Law relating to the recovery of Rent in the North-Western Provinces.

WHEREAS it is expedient to amend the law relating to the recovery of Rent in the North-Western Provinces of the Presidency of Fort William in Bengal; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The North-Western Provinces Rent Act, 1881:"

Local extent.

It extends in the first instance to the territories for the time being under the government of the Lieutenant-Governor of the North-Western Provinces, except those specified in the second schedule hereto annexed. But the Local Government may, by notification in the official Gazette, extend the whole or any part of this Act to all or any of the territories so excepted, and when any part of the North-Western Provinces Rent Act, 1873, has been extended to any such territory, such part shall be repealed therein and the corresponding part of this Act shall extend thereto.

Save as provided by sections 171 and 172, nothing herein contained applies to land for the the time being occupied by dwelling-houses or manufactories, or appurtenant thereto, so long as such land is not let to agricultural tenants.

Commencement.

This Act shall come into force on the first day of April, 1881.

Act No. XVIII of 1873 repealed.

2. The North-Western Provinces Rent Act, 1873, is hereby repealed. But such repeal shall not legalize any practice which, immediately before the passing of that Act, was unlawful.

Rules, &c., under repealed Act.

All rules and appointments made, notifications and proclamations issued, authorities and powers conferred, leases granted, rents fixed, rights acquired, liabilities incurred and places appointed under that Act shall, so far as may be, be deemed to have been made, issued, conferred, granted, fixed, acquired, incurred and appointed hereunder.

Acts amended.

Illustration (*a*) to the Indian Penal Code, section 19, and Act No. XI of 1865, section 52, shall be read as if, for "Act X of 1859," the words and figures, "the North-Western Provinces Rent Act, 1881," were substituted. And in all Acts passed after the said North-Western Provinces Rent Act, 1873, all references to that Act shall be read as if made to this Act.

Interpretation-clause.

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

'Mahál:'

(1.) 'Mahál' means—

(*a*) any local area held under a separate engagement for the payment of land-revenue, and for which a separate record-of-rights has been framed;

(*b*) any local area of which the revenue has been assigned or redeemed, and for which a separate record-of-rights has been framed:

'Tenant:'

(1A.) 'Tenant' includes a thékadár and a katkanadár:

'Rent:'

(2.) 'Rent' means whatever is to be paid, delivered or rendered by a tenant on account of his holding, use or occupation of land:

'Landholder:'

(3.) 'Landholder' means the person to whom a tenant is liable to pay rent:

'Sír-land:' (4.) 'Sír-land' means—

(*a*) land recorded as sír at the last settlement or revision of settlement of the district in which it is situate, and continuously so recorded since;

(*b*) land continuously cultivated for twelve years by the proprietor himself with his own stock or by his servants, or by hired labour;

(*c*) land recognized by village-custom as the special holding of a co-sharer, or treated as such in the distribution of profits or charges among the co-sharers:

'Collector of a District:' (5.) 'Collector of a District' means the chief officer in charge of the Revenue Administration of a District:

'Commissioner of a Division:' (6.) 'Commissioner of a Division' means the chief officer in charge of the Revenue Administration of a Division:

'Board:' (7.) 'Board' means the Board of Revenue for the North-Western Provinces:

'Civil Jail:' (8.) 'Civil Jail' means the civil jail of the District, and includes any place appointed by the Local Government for the confinement of prisoners under sentence of any Court constituted under this Act.

CHAPTER II.

RIGHTS AND LIABILITIES OF LANDHOLDERS AND TENANTS.

Intermediate holders of land at rates unchanged since permanent-settlement.

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

Tenants at fixed rates.

5. When any land in a district or portion of a district which is permanently settled has been held by a tenant and his predecessors in interest, from the time of the permanent settlement, at the same rate of rent, such tenant shall have a right of occupancy at that rate.

A tenant having such right is hereinafter called a "tenant at a fixed rate."

Presumption when 20 years' holding at fixed rate is proved.

6. When, in any suit to which the provisions of section 4 or section 5 apply, it is proved that the land has for a period of twenty years next before the institution of the suit been held by the present holder and his predecessors in interest at the same rate of rent, it shall be presumed, until the contrary is proved, that it has been held at such rate from the time of the permanent settlement.

Ex-proprietary tenants.

7. Every person who may hereafter lose or part with his proprietary rights in any mahál shall have a right of occupancy in the land held by him as sír in such mahál at the date of such loss or parting, at a rent which shall be four annas in the rupee less than the prevailing rate payable by tenants-at-will for land of similar quality and with similar advantages.

Persons having such rights of occupancy shall be called "ex-proprietary tenants," and shall have all the rights of occupancy-tenants.

If there are two or more sharers in any sír-land and one of them becomes an ex-proprietary tenant, the share which previously belonged to such ex-proprietary tenant shall, on his application or on the application of the person entitled to receive the rent, be divided off by the Collector, and the rights of the ex-proprietary tenant shall be limited to the land comprised in such share.

Occupancy-tenants.

8. Every tenant who has actually occupied or cultivated land continuously for twelve years has a right of occupancy in the land so occupied or cultivated by him.

Such tenants shall be called "occupancy-tenants."

The occupation or cultivating of the father or other person from whom the tenant inherits, shall be deemed to be the occupation or cultivating of the tenant within the meaning of this section:

Tenants barred from right of occupancy.

Provided that no tenant shall acquire, under this section, a right of occupancy—

(*a*) in land which he holds from an occupancy-tenant, or from an ex-proprietary tenant, or from a tenant at fixed rates;

(*b*) in sír-land;

(*c*) in land held by him in lieu of wages.

Time excluded from reckoning period necessary for acquiring right of occupancy.

Provided also that, when a tenant actually occupies or cultivates land under a written lease, without having a right of occupancy in such land, the period of twelve years necessary for acquiring a right of occupancy therein by him or any one claiming under him shall begin on the expiration of the term of such lease. If during the currency of such lease he ceases to occupy the land comprised therein, and sublets it to another, no right of occupancy in such land shall be acquired by the sub-lessee during the currency of the lease.

Rights under sections 7 and 8 when transferable.

9. The right of tenants at fixed rates may devolve by succession or be transferred.

No other right of occupancy shall be transferable in execution of a decree or otherwise than by voluntary transfer between persons in favour of whom as co-sharers such right originally arose or who have become by succession co-sharers therein.

When any person entitled to such last-mentioned right dies, the right shall devolve as if it were land: Provided that no collateral relative of the deceased who did not then share in the cultivation of his holding shall be entitled to inherit under this clause.

Determination of class of tenure of tenant.

10. On the application of any tenant to have his class of tenure determined, the Collector of the District or Assistant Collector shall determine the class to which he belongs, namely—

whether he is a tenant at fixed rates,

or an ex-proprietary tenant,

or an *occupancy-tenant*,

or whether he is a tenant without a right of occupancy.

Bar to enhancement of rent of tenants at fixed rates.

11. The rent paid by tenants at fixed rates shall not be liable to enhancement, except as provided by section 18.

Enhancement in case of ex-proprietary and occupancy-tenants.

12. The rent paid by ex-proprietary or occupancy-tenants shall not be liable to enhancement except—

(*a*) by a written agreement registered under the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or recorded before the kánúngo: or

(*b*) by order of a Settlement-officer passed under the law for the time being in force: or

(*c*) by order under this Act.

Grounds of enhancing rent of occupancy-tenants which has not been fixed by order.

13 (*a*). Where the rent of any occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

(*b*) or where the rent has been fixed by any such order, but the term for which it has been fixed has expired,

(*c*) or where ten years from the date on which an order fixing the rent has taken effect have expired,

(*d*) or where by order of the Local Government the assessment of the district has been revised before confirmation,

(*e*) or where the period of settlement of the district has come to an end,

the landholder may apply to enhance the rent of such tenant on one of the following grounds and on no others:—

(*f*) that the rate of the rent paid by such tenant is below the prevailing rate payable by the same class of tenants for land of similar quality with similar advantages;

(*g*) that the value of the produce has, or the productive powers of the land have, been increased otherwise than by the agency or at the expense of the tenant;

(*h*) that the quantity of land held by the tenant has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

Enhancement of rent of ex-proprietary tenants which has not been fixed by order.

14 (*a*). Where the rent of any ex-proprietary tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*) has occurred,

the landholder may apply to enhance or determine the rent of such tenant as if he were an occupancy-tenant: Provided that his rent shall be four annas in the rupee below the prevailing rate for land of a similar quality with similar advantages held by tenants-at-will.

Selection of land for comparison.

(*b*). Whenever the district or tahsíl, or other local area in which such land is situated, has been divided by the Settlement-officer into circles of like capacity and soil, the land of similar quality, with similar advantages, shall, for the purposes of this section and section 13, be selected from the same circle.

(*c*). When the Settlement-officer has not so divided the district or other local area as aforesaid, the land regarding which the application has been made shall be compared with land of similar quality and with similar advantages, in the same tahsíl or in a tahsíl immediately adjacent.

Abatement in like cases.

15. Where the rent of any ex-proprietary tenant or occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*) has occurred,

the tenant may apply for an abatement of his rent on one of the following grounds, and on no others:—

(*a*) that the area of the land held by him has been diminished by diluvion or otherwise:

(*b*) that the value of the produce has, or the productive powers of such land have, been decreased by any cause beyond his power.

Time of enhancement or abatement where rent of ex-proprietary or occupancy-tenant has been fixed by order under this Act.

16. Where the rent of any ex-proprietary or occupancy-tenant has been fixed by an order under this Act, such rent shall not be liable to be enhanced or abated until the occurrence of any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*), whichever first occurs.

Grounds of enhancement and abatement where his rent has been fixed by order of a Settlement-officer or under this Act.

17. Notwithstanding anything contained in section 16 where the rent of any ex-proprietary or occupancy-tenant has been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act, the landholder may apply to enhance the rent of such tenant during the currency of the term for which the rent has been so fixed, on one of the following grounds, and on no others:—

(*a*) that the area of the tenants holding has been increased by alluvion or otherwise:

(*b*) that the productive powers of the land held by the tenant have, since the date of the order, been increased otherwise than by the agency or at the expense of the tenant;

And the tenant may apply for abatement of his rent on one of the following grounds, and on no others:—

(*c*) that the area of the land held by him has been diminished by diluvion or otherwise;

(*d*) that the productive powers of such land have been decreased by any cause beyond his control.

18. In the case of a tenant at fixed rates, the landholder may apply to enhance his rent on the ground that the area of the land in his holding has been increased by alluvion or otherwise,

Grounds of enhancement or abatement of rent of tenant at fixed rates.

and the tenant may apply for abatement of his rent on the ground that the area of the land in his holding has been diminished by diluvion or otherwise.

19. Applications for enhancement or abatement of rent must be made on or before the thirty-first day of August next before the year commencing on the first day of July from which the rent is to be enhanced or abated,

Day before which applications for enhancement or abatement must be made.

and every order for enhancement or abatement shall take effect from the first day of July next following the date of such order, unless for some reason, to be stated in writing, the Court thinks fit to order otherwise.

Orders when to take effect.

20. In determining, under this Chapter, the rate of rent payable by any tenant, his caste shall not be taken into consideration, unless it is proved that, by local custom, caste is taken into account in determining such rate;

Consideration of caste and class of tenant in determining rate of his rent.

and whenever it is found that, by local custom or practice, any class of persons, by reason of their having formerly been proprietors of the soil or otherwise, hold land at favourable rates of rent, the rate shall be determined in accordance with such custom or practice.

21. No tenant-at-will of land shall be liable to pay rent in excess of the rent (if any) payable by him in the previous year ending on the thirtieth day of June, unless the landholder and tenant have agreed as to the rent to be paid to the former by the latter, and such agreement has been recorded by the kánúngo of the pargana in which such land is situate.

Tenants-at-will.

22. Notwithstanding anything hereinbefore contained, when the rent of any ex-proprietary or occupancy-tenant has been fixed by agreement between the parties, such rent shall not be liable to enhancement or abatement for such term as may be agreed on.

Rent of ex-proprietary or occupancy-tenant fixed by agreement.

22A. When any land is held of a landholder by a tenant, such landholder or tenant may, in the absence of a written contract to the contrary, apply to the Collector of the District to have such land surveyed. The Collector, on receiving such application, may estimate the cost of such survey, and, by order in writing, require the applicant to deposit the amount of such estimate.

Applications to survey land.

If the applicant deposits such amount within fifteen days from the date of the order, the Collector of the District shall issue a notice to the other party or parties to the tenancy to show cause, at a time and place specified in such notice, why the survey should not be made; and, if no such cause is so shewn, may, by an order in writing, direct the survey to be made by such person and at such time as he thinks fit.

A copy of such order shall be served on all the parties to the tenancy; and, if any party fails to attend at the appointed time, it shall not thereafter be open to him to question the correctness of the survey made in his absence.

If any party, on being called upon to show cause as aforesaid, makes any objection to the survey and such objection is overruled, he shall be liable to pay the costs (if any) occasioned by such objection.

Nothing in this section shall affect any power conferred by law to compel the attendance of any person at a survey.

23. Whenever for any cause the Local Government remits or suspends for any period the payment of the whole or any part of the revenue payable in respect of any land, any officer empowered by the Local Government in this behalf may, subject to such rules as to appeal, confirmation or otherwise as may, from time to time, be prescribed by the Board, order that the rent of such land shall be remitted, or suspended for the period of such suspension of payment of revenue, as the case may be, to an amount which shall be equal to double the amount of the revenue of which the payment has been so remitted or suspended, or shall bear the same proportion to the whole of the rent payable in respect of the land as the revenue of which the payment has been so remitted or suspended bears to the whole of the revenue payable in respect of such land;

Power to remit or suspend payment of rent when payment of revenue remitted or suspended.

and, subject to the same rules, the landholder shall be bound by such order.

(*A*).—*Leases.*

24. Every tenant is entitled to receive from the landholder, and may at any time during the continuance of his holding, apply for a lease containing the following particulars:—

Contents of lease to which every tenant is entitled.

(*a*) the quantity of land held by him, and, where the fields have been numbered in a Government survey, the number of each field:

(*b*) the amount of annual rent payable for such land:

(*c*) the instalments in which, and the dates on which, such rent is to be paid:

(*d*) any special conditions of the lease:

(*e*) if the rent is payable in kind, or is calculated on a valuation of the produce, the proportion of produce to be delivered, the mode of valuation, and the time, manner and place of delivery.

25. Tenants at fixed rates are entitled to receive leases at such rates.

Leases to which tenants at fixed rates are entitled.

26. Ex-proprietary and occupancy-tenants are entitled to receive leases at the rates determined in accordance with the law for the time being in force, or, where no rates have been so determined, at the rates actually paid by them when they demand such leases.

Leases to which ex-proprietary and occupancy-tenants are entitled.

27. All other tenants are entitled to leases only on such terms as may be agreed upon between them and the landholders.

Leases to which other tenants are entitled.

28. Every landholder who grants a lease is entitled to receive a reciprocal engagement from the tenant, executed by the tenant, and conformable with the terms of the lease.

Landholder granting lease entitled to reciprocal engagement.

The tender to any tenant of a lease, such as he is entitled to receive, shall entitle the landholder to receive a reciprocal engagement from such tenant.

29. Notwithstanding anything contained in section 22, when any lease is granted, or any agreement is entered into, by any landholder under engagement with Government for his land, fixing the rent of land for any period exceeding the term of such engagement, and such term expires, such lease or agreement shall,

Lease for period exceeding term of landholder's engagement.

(*a*) when, on the expiration of such term, the revenue payable in respect of such land is enhanced—be voidable at the option of the landlord, unless the tenant agrees to pay such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the landlord, determine to be fair and reasonable; and

(*b*) when such land-revenue is on the expiration of such term reduced—be voidable at the option of the tenant, unless the landlord agrees to accept such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the tenant, determine to be fair and reasonable.

30. (*a*) And whereas all grants (whether in writing or otherwise) for holding land exempt from the payment of rent which have been made since the first day of December, 1790, by any authority other than that of the Governor General in Council, were declared by Bengal Regulation XIX of 1793, section 10, to be null and void, and like provisions have been by divers Regulations applied to the several parts of the territories to which this Act extends, and the said Regulation XIX of 1793 also provided that no length of possession should be considered to give validity to any such grant, either with regard to the property in the soil or the rents of it, it is hereby further enacted as follows:—

Resumption of rent-free grants.

(*b*) Applications by the proprietor to resume such grants or to assess rent on the land, shall be made to the Collector of the District or Assistant Collector, and, subject to rules to be made by the Local Government, shall be dealt with as other applications under this Act.

Applications to resume.

(*c*) Grants of land held under a written instrument, by which the grantor expressly agrees that the grant shall not be resumed, shall be held valid as against him (but not as against his representatives after his death) during the continuance of the settlement of the district in which the land is situate, which is current at the date of the grant.

Validity of grants which grantor has expressly agreed not to resume.

(*d*) Where any land, having been for the fifty years next before the twenty-second day of December, 1873, held rent-free and by at least two successors to the original grantee, was so held on that day, such holding shall be deemed to have conferred on the holder a proprietary right.

When rent-free tenure confers proprietary right.

(*e*) Nothing in the Indian Limitation Act, 1877, shall bar the right to make an application under this Act to assess to rent land held rent-free.

(*f*) Nothing in this section shall apply to either of the following cases:—

(1) Where land was, previously to the passing of the North-Western Provinces Rent Act, 1873, held rent-free under a judicial decision:

(2) Where, previously to the passing of that Act, land held rent-free had been purchased for a valuable consideration and resumption thereof had been barred under Act No. X of 1859, section 28, or under the Indian Limitation Act, 1871, schedule II, No. 130.

(*B*).—*Relinquishment and Ejectment.*

31. Every tenant not holding under a lease shall continue liable for the rent of the land in his holding for the ensuing year, unless on or before the first day of May in any year he gives notice in writing to the landholder, or his recognized agent, of his desire to relinquish such land on the thirtieth day of June next ensuing, and relinquishes it accordingly; or unless it is let to any other person by such landholder or agent:

Relinquishment of land by tenant not holding under a lease.

Provided that, whenever an order for the enhancement of the rent of any land held by any such tenant is passed and the tenant within fifteen days of the date of such order gives to the landholder or his recognized agent notice in writing of his desire to relinquish such land at the commencement of the period in respect of which such enhancement takes effect, and relinquishes such land accordingly, he shall not be liable for the rent payable for such land in respect of any period subsequent to such relinquishment.

Proviso.

Explanation.—No notice can be given under this section in respect of a portion only of any land held under the same lease or engagement.

32. If the landholder or his agent refuses to receive any notice under section 31, or if he receives it, but refuses to sign and deliver a receipt for the same, the tenant may, before the expiration of the period limited for giving such notice, make an application to the tahsíldár, who shall thereupon cause the notice to be served on such landholder or agent, the tenant paying the costs of service.

Service through tahsíldár of notice of relinquishment.

33. The notice shall, if practicable, be served personally on the landholder or his agent; but if the landholder or his agent cannot be found, or if he evades service of the notice, 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

Mode of serving notice.

land is situate, at the *chaupál*, or other conspicuous place in the village where the land is situate.

Where the delay in serving the notice is owing to the fault of the landholder or his agent, the notice shall be deemed to have been served at the first attempt to serve it.

Application by landholder to set aside notice.

33A. When any such notice has been received by or served on a landholder or his agent he may, within fifteen days from such receipt or service, apply to the Collector or Assistant Collector to have such notice declared invalid, and the Collector shall thereupon determine the question between the parties.

If the landholder or his agent does not so apply within such period of fifteen days, he shall be deemed to have accepted the notice.

Liability of tenant to pay interest on arrear and to be ejected.

34. (*a*). When an arrear of rent remains due from any tenant, he shall be liable to pay interest on such arrear at one per cent. per mensem; and if the arrear remains due on the thirtieth day of June, to be ejected from the land in respect of which the arrear is due.

Bar to ejectment without decree.

(*b*). No tenant shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

Ejectment not to be decreed for certain acts or omissions.

(*c*). No ejectment of a tenant or forfeiture of a lease shall be decreed on account of any act or omission of the tenant—

(1) which is not detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let, or

(2) which by law, custom, or special agreement does not involve the forfeiture of the lease.

Explanation.—In clauses (*a*) and (*b*) the word 'tenant' does not include a thékadár and a katkanadár.

Ejectment of tenant at fixed rates, ex-proprietary, with right of occupancy, or holding under unexpired lease.

35. If the landholder desires to eject a tenant at fixed rates, an ex-proprietary tenant, an occupancy-tenant or a tenant holding under an unexpired lease, against whom a decree for arrears has been passed and remains unsatisfied, he may, after the expiration of the year, ending on the thirtieth day of June, in which such arrears accrued, apply to the Collector of the District or Assistant Collector to eject the tenant.

Such officer shall, on receiving such application, cause a notice to be served on the tenant, stating the amount due under the decree, and informing him that if he does not pay such amount into Court within fifteen days from receipt of the notice, he will be ejected from his land.

If such amount be not so paid, the Collector of the District or Assistant Collector may eject the tenant.

Service of notice on tenant for limited period.

36. If the landholder desires to eject a tenant not having a right of occupancy, or any other tenant holding only for a limited period, after the determination of his tenancy, he shall cause a written notice of ejectment to be served on such tenant under the provisions of this Act.

Language and contents of notice.

37. The notice of ejectment shall be written in the vernacular language and character of the district:

it shall specify the land from which the tenant is to be ejected;

and it shall inform him that he must vacate such land; or that, if he means to contest the right to eject him, he must apply to the Collector of the District or Assistant Collector for that purpose.

Mode of serving notice.

38. The notice shall be issued and served through the office of the tahsíldár on application made to him between the first day of January and the first day of April in each year, and the landholder shall pay the cost of service: it shall be served personally on the tenant, if practicable; but if he cannot be found, service may be made by affixing the notice to his usual place of residence.

Effect of failure of tenant to institute suit to contest liability to ejectment.

39. (*a*). The tenant, on whom such notice has been served, may, within thirty days next after the service, make an application to the Collector of the District or Assistant Collector, contesting his liability to be ejected.

(*b*). When such an application is made, the Collector of the District or Assistant Collector shall proceed to determine the question between the parties.

(*c*). On the determination of such question adversely to the tenant, or, where no application under this section has been made within the said period of thirty days, on the expiration of such period, the tenancy of the land in respect of which the notice has been served shall cease:

Provided that when such question has been determined or such period has expired, as the case may be, before the first day of May next following the making of the application under section 38, the tenancy shall continue until and cease upon that day:

Provided also that the tenancy shall not cease under this section when after the service of the notice, the landholder authorises the tenant to continue in the occupation of the land.

Procedure to enforce ejectment.

40. If the landholder require assistance to eject the person whose tenancy is alleged to have ceased under the provisions of section 39, he may, within fifteen days from the date of such cessation, apply to the Collector of the District or Assistant Collector for such assistance, and the Collector of the District or Assistant Collector shall order the ejectment of such tenant if he is satisfied—

(*a*) that the notice was duly served on such tenant under section 38;

(*b*) that he has not been authorized by the landholder to continue in occupation;

(*c*) that the tenant has not made the application mentioned in section 39, clause (*a*); or

(*d*) that if such application has been made, the question has been determined adversely to the tenant:

Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received if the lease be of the kind in which an advance has been made by the lessee-

holder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance either in money or by the usufruct of the land. In all such cases the landholder must proceed by suit in the Civil Court.

Notice of ejectment when void.

41. If the landholder expressly authorise the tenant, on whom the notice of ejectment has been served, or against whom any proceedings in ejectment under section 40 have been taken, to remain in occupation of the land, and to prepare it for the harvest, the proceedings shall become void.

Rights of ejected tenant.

42. (*a*). Any tenant ejected in accordance with the provisions of this Act, shall be entitled to any growing crops or other ungathered products of the earth belonging to the tenant, and growing on the land at the time of his ejectment, and to use the land for the purpose of tending and gathering in such crops or other products, paying adequate rent therefor:

Effect of tender by landholder of payment for crops.

(*b*). Provided that, if the landholder desire to purchase such crops or other products, he may tender their price to the tenant; and thereupon the right of the tenant to such crops and other products, and to use the land for the purpose aforesaid, shall cease.

Power to determine rent and price.

(*c*). In the case of a dispute under this section, the Collector of the District or Assistant Collector may, on the application of the landholder or tenant, award the rent and price so payable; and the amount of such award, or of any tender accepted under this section, shall be recoverable as an arrear of rent by suit under this Act.

Set-off of rent.

(*d*). The rent, if any, payable to the landholder by the tenant at the time of his ejectment may be set-off against the price of the said crops or other products.

Application for officer to divide produce or appraise crop.

43. (*a*). Wherever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other procedure of a like nature, requiring the presence both of the cultivator and landholder, either personally or by agent,

if either landholder or tenant, personally or by agent, neglect to attend at the proper time, or if there is a dispute as to the amount or value of the crop,

an application may be presented by either party to the Collector of the District or Assistant Collector, requesting that a proper officer be deputed to make the division, estimate or appraisement.

Procedure on such application.

(*b*). On receiving such application, the Collector of the District or Assistant Collector shall issue a written notice to the opposite party or his agent, to attend on the date and at the time specified in the notice, and shall depute an officer before whom such division, estimate or appraisement shall be made.

(*c*). If on or before the date appointed, the dispute has not been amicably adjusted, three residents of the village or neighbourhood shall be appointed assessors; one by each of the parties and one by the officer deputed to divide the grain or estimate or appraise the crops, and the officer deputed shall decide the amount of rent payable by their award, and shall give to the party applying a written authority to divide the grain or cut the crops:

(*d*). Provided that, if either party fail to attend, the officer deputed shall nominate an assessor on his behalf.

(*e*). The officer deputed shall report his proceedings to the Collector of the District or Assistant Collector, who shall determine the amount of costs properly incurred under this section, and the share of the costs to be paid by either party.

(*C*).—*Compensation for Improvements made by Tenants.*

Tenants' right to compensation for improvements.

44. If any tenant, or any person from whom he has inherited or purchased, make any such improvements on the land in his possession as are hereinafter mentioned, neither he nor his representative shall be ejected from the same land without payment of compensation for such improvements.

Explanation.—In this section the word "tenant" does not include a thékadár or a katkanadár and the word "improvements" 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—

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

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

(*c*) the reclaiming, clearing, or enclosing of lands for agricultural purposes,

(*d*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto.

Notwithstanding anything hereinbefore contained, no tenant, other than a tenant at fixed rates or an occupancy-tenant, shall be entitled to compensation in respect of any improvement made without the consent of the landholder after this Act comes into force.

Mode of making compensation.

45. Such compensation may, at the option of the landholder or his representative, be made—

1*st*,—by payment in money;

2*nd*,—by a rent to be charged on the land;

3*rd*,—by the grant of a beneficial lease of the land, by the landholder or his representative, to the tenant or his representative;

4*th*,—partly by one or by any two of the said ways, and partly by the other or other of the same ways.

Settlement of difference as to amount or value of compensation.

46. In case of difference as to the amount or value of the compensation tendered, either party may apply to the Collector of the District or Assistant Collector stating the matter in dispute, and requesting a determination thereof.

On receiving such application, the Collector of the District or Assistant Collector shall—

(*a*) cause notice thereof to be served on the other party,

(*b*) take such evidence as the parties or either of them may adduce,

(*c*) make such further inquiry as the Collector of the District or Assistant Collector may deem necessary, and

(*d*) determine the amount of the payment in money, and the amount and incidence of the rent-charge, and the terms of the lease, or any of such matters.

Considerations in determining compensation.

47. In determining the amount or value mentioned in section 46, or the terms of such lease, the Collector of the District or Assistant Collector shall take into account any assistance given to the tenant by the landholder either directly in money, material or labour, for the purpose of making such improvements, or indirectly by allowing the tenant to hold at a favourable rate of rent.

(*D*).—*Compensation for wrongful acts and omissions.*

Right of tenant to compensation for exactions in excess of rent or for withholding receipt.

48. Every tenant from whom any sum is exacted in excess of the rent specified in his lease or payable under the provisions of this Act,

and every tenant from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the landholder compensation not exceeding double the amount so exacted or paid

Contents of receipt.

Receipts for rent shall specify the period or crop on account of which the rent is acknowledged to have been paid;

and any refusal to make such specification shall be held to be a withholding of a receipt.

Explanation.—In this section the word "tenant" does not include a thékadár or a katkanadár.

Damages for extorting payment of rent by duress.

49. If payment of rent, whether the same be legally due or not, is extorted from any tenant by illegal confinement or other duress, he shall be entitled to recover from the person guilty of such extortion such further compensation, not exceeding the sum of two hundred rupees, as the Collector of the District or Assistant Collector thinks reasonable.

Liability to punishment for extortion not affected.

An award of compensation under this section shall not bar or affect any penalty or punishment to which the person guilty of such extortion may be subject under the Indian Penal Code.

(*E*).—*Deposit of Rent in Court.*

Deposit of amount tendered by tenant and refused.

50. If any tenant tenders to the landholder full payment of the rent due from him, and if the amount so tendered be not accepted, and a receipt for the amount forthwith granted, the tenant may thereupon apply to the Collector of the District or Assistant Collector for leave to deposit such amount in his Court to the credit of the landholder.

Form and verification of application.

51. The application to the Collector of the District or Assistant Collector shall be as nearly as may be in the form (A) in the first schedule hereto annexed, and shall be verified in the manner hereinafter prescribed for the verification of plaints.

Penalty for false statement.

And the person making the verification shall be punishable, if the application contain any averment which he knows or believes to be false, or does not know or believe to be true.

Notice to issue on deposit being made.

52. The Collector of the District or Assistant Collector shall receive the amount which the tenant desires to deposit, and shall thereupon issue to the person to whose credit it has so been deposited, a notice in English or the vernacular language of the district in the form (B) in the first schedule hereto annexed, or to the like effect.

And such deposit shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

Mode of serving notice.

53. Such notice shall be served through the tahsíldár upon the person to whom it is addressed, or upon his recognized agent.

In their absence, the notice shall be affixed at the *chaupál*, or other conspicuous place in the village in which the land for which the rent is due is situate.

Payment to person served with notice on his application.

54. If at any time before the expiration of three years from the date of the deposit 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 be paid accordingly, unless it has been repaid or paid in accordance with the provisions next hereinafter contained.

Refund to depositor.

55. If no application be made by such person or his recognized agent, the sum shall be repaid to the depositor on the expiration of three years from the date of the deposit.

And at any time before the expiration of such period, on the joint application of the depositor and the person to whose credit the said sum was deposited, such sum shall be paid in such manner as the joint applicants desire.

Deposit in Court of rent claimed by two or more persons.

55A. When, owing to the death of the landlord or other cause, two or more persons severally claim the right to collect the rent from a tenant, the tenant may apply to the Collector of the District or the Assistant Collector for leave to deposit in Court the full amount of rent due from him, and such deposit, if made with the leave of the Collector or Assistant Collector, shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

The Collector of the District or Assistant Collector may, after such enquiry as he thinks necessary, direct payment of the amount deposited to such one of the persons claiming such rent as appears to him entitled to receive the same, or may order the same to remain in deposit pending decision by a competent Court.

No suit shall lie against the Secretary of State for India in Council or against any officer of Government in respect of any payment made under this section, but nothing herein contained shall affect the right of any person entitled to such

payment to recover the amount thereof from any other person to whom it has been paid.

CHAPTER III.

DISTRESS.

Produce of land hypothecated for rent.

56. The produce of all land in the occupation of a cultivator shall be deemed to be hypothecated for the rent payable in respect of such land; and until such rent has been satisfied, no other claim on such produce shall be enforced by sale in execution of decree or otherwise;

Recovery of arrears by distress.

and when an arrear of rent is due from any cultivator, the person entitled to receive rent immediately from him may, instead of suing for the arrear as hereinafter provided, recover the same by distress and sale of the produce of the land in respect of which the arrear is due, under the rules contained in this chapter.

57. Provided—

Distress of produce barred by security given for rent.

(*a*) that when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to be distrained:

Sharer when entitled to distrain.

(*b*) that no sharer in any mahál shall have power to distrain upon any cultivator unless he is entitled to collect the whole rent from such cultivator:

Distress by manager.

(*c*) that no sharer in a joint undivided mahál shall exercise such power otherwise than through a manager authorized to collect the rents of the whole mahál on behalf of all the sharers therein:

Distress in pattídárí mahals.

(*d*) that in pattídárí mahals distress shall be made only through a lambardár, or, where the rent of a pattí is not collected by a lambardár, through the pattídár who is entitled to collect the rent.

No distress for overdue arrear, nor, without agreement, for excess over past year's rent.

58. A distress shall not be made for any arrear which has been due in respect of any land for a longer period than one year:

nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless the rent has been enhanced under the provisions hereinbefore contained, or by order of a Settlement-officer, or unless the cultivator has agreed to pay such excess and such agreement has been attested before the kánúngo.

Distress by managers under Court of Wards, &c.

59. The power to distrain conferred by sections 56 and 57 may be exercised by managers under the Court of Wards and other persons lawfully entrusted with the charge of immoveable property;

and also by the agents employed by such persons as aforesaid, in the collection of rent, if expressly authorized by power-of-attorney in that behalf:

Liability for illegal act.

If any wrongful act is committed by any such agent, under colour of the exercise of the said power, such agent and his principal shall be jointly and severally liable to make compensation for such act.

Written authority to servants employed to distrain.

60. When any person, empowered to distrain property under section 56, section 57 or section 59, employs a servant or other person to make the distress, he shall give him a written authority for the same, and the distress shall be made in the name of the person giving such authority.

Standing crops and crops gathered liable to distress.

61. 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 power to distrain under the provisions of this Act.

Exception.

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

Defaulter to be served with written demand and account.

62. Before or at the time when a 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.

Mode of service.

The demand and account shall, if practicable, be served personally on the defaulter; or, if he abscond or conceal himself, so that they cannot be so served, shall be affixed at his usual place of residence.

Distress to be proportionate to arrear.

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

List of property to be prepared and copy served on owner.

Standing crops, &c., when distrained, may be reaped and stored.

64(*a*). Standing crops and other ungathered products may, notwithstanding the distress, be reaped and gathered by the cultivator, and he may store the same in such granaries or other places as are commonly used by him for the purpose.

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

(*c*). In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose.

Sale of products which cannot be stored.

(*d*). Crops or products which, from their nature, do not admit of being stored, may be sold before they are reaped or gathered, under the rules hereinafter provided; but in such case, the distress shall be made at least twenty days before the time when the crops, or products, or any part of the same are fit for reaping or gathering.

65. If a distrainer is opposed, or apprehends resistance, and desires to obtain the assistance of a public officer, he may apply to the Collector of the District or Assistant Collector, who may, if he thinks necessary, depute an officer to assist the distrainer in making the distress.

Assistance to distrainer opposed or apprehending resistance.

66. If at any time after property has been distrained and before the day fixed for putting it up to sale as hereinafter provided, the owner of the property tenders payment of the arrear demanded of him, and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

Distress to be withdrawn on tender of arrear and expenses before sale.

67. Within five days from the time of the storing of any distrained crops or products,

Application for sale.

or, if the crops or products do not, from their nature, admit of being stored within five days from the time of making the distress,

the distrainer shall apply for sale of the same to the officer for the time being authorized by the Local Government to sell distrained property within the tahsíl in which they are situate.

Contents of application.

68. The application shall be in writing, and shall contain—

(*a*) an inventory or description of the property distrained,

(*b*) the name of the defaulter and his place of residence,

(*c*) the amount due, and the date of the distress, and

(*d*) the place in which the distrained property is.

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

Fee for service of notice.

69. Immediately on receipt of the application, the said officer shall send a copy of it to the Collector of the District or Assistant Collector,

Procedure on receipt of application.

and shall serve a notice in the form (G) contained in the first schedule hereto annexed, or to the like effect, on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector of the District or Assistant Collector, within the period of fifteen days from the receipt of the notice.

He shall at the same time send to the Collector of the District or Assistant Collector, for the purpose of being put up in his office and in the office of the tahsildár, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain—

(*a*) a description of the property,

and shall specify—

(*b*) the demand for which it is to be sold, and

(*c*) the place where the sale is to be held.

70. If a suit is instituted before the Collector of the District or Assistant Collector in pursuance of the aforesaid notice, the Collector of the District or Assistant Collector shall send to the officer referred to in section 67, or, if so requested, shall deliver to the owner of the distrained property, a certificate of the institution of such suit;

Suspension of sale on receipt of Collector's certificate of institution of suit.

and on such certificate being received by, or presented to, the said officer, he shall suspend the sale.

71. A person whose property has been distrained in manner hereinbefore provided may, immediately after the distress, and before the issue of notice of sale, institute a suit to contest the demand of the distrainer.

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

When such suit is instituted, the Collector of the District or Assistant Collector shall proceed in the manner prescribed in the last preceding section.

If, thereafter, application for the sale of the property is made to the said officer, he shall send a copy of the application to the Collector of the District or Assistant Collector, and suspend further proceedings, pending the decision of the case.

72. 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 a surety, binding himself to pay whatever sum may be adjudged to be due from him, with interest and costs of suit;

Distress when to be withdrawn.

and when such bond is executed, the Collector of the District or Assistant Collector shall give to the owner of the property a certificate to that effect, and, if so requested, shall serve the distrainer with notice of the same;

and upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Collector of the District or Assistant Collector, the property shall be released from distress.

73. If the institution of a suit to contest the demand of the distrainer has not been certified, in manner hereinbefore provided, to the said officer, on or before the day fixed in the proclamation of sale, he shall, unless the said demand, with such costs of the distress as are allowed by him, be discharged in full, proceed, in manner hereinafter mentioned, to sell the property or such part of it as may be necessary to satisfy the demand with the costs of distress and sale.

When sale may be proceeded with.

74. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the said officer is of opinion that it is likely to sell there to better advantage.

Place of sale.

The property shall be sold by public auction, in one or more lots, as the officer holding the sale may think advisable;

Manner of sale.

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.

Withdrawal of distress when demand and costs satisfied.

75. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) be not offered for it, and if the owner of the property, or some person authorized to act on his behalf, apply to have the sale postponed until the next day, or, if a market be held at the place of sale, the next market-day, the sale shall be postponed until such day and shall be then completed whatever price may be offered for the property.

If fair price be not offered, sale may be postponed and shall be then completed.

76. The price of every lot shall be paid for in ready money at the time of sale, or as soon thereafter as the officer holding the sale thinks necessary;

Payment of purchase-money.

and, in default of such payment, the property shall be put up again and sold, and the deficiency in price (if any) which may happen on such second sale and all expenses attending such second sale shall, at the instance either of the distrainer or the owner of the property, be recoverable from the defaulter under the rules hereinafter contained for the execution of a decree for rent.

Re-sale on default.

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

Certificate to purchaser.

77. From the proceeds of every sale of distrained property under this Act, the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall send the amount so deducted to the Collector of the District or Assistant Collector.

Deduction, from proceeds, of costs of sale.

He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress, and of the issue of the notice and proclamation of sale prescribed in section 69, to such amount as, after examining the statement of expenses furnished by the distrainer, he thinks proper to allow.

Payment of distrainer's expenses.

The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale;

Discharge of arrear with interest.

and the surplus (if any) shall be delivered to the person whose property has been sold.

Surplus.

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

Sale-officers and employés prohibited from purchasing.

79. Officers holding sales under this Chapter are required to bring to the notice of the Collector of the District or Assistant Collector any material irregularities committed by distrainers under colour of this Act;

Report of irregularities by distrainer.

and if, in any case, on proceeding to hold any such sale, the officer holding it find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector of the District or Assistant Collector, who shall thereupon direct the issue of another notice and proclamation of sale under section 69, or pass such other order as he thinks fit.

Postponement of sale, and report to Collector when owner has not received due notice.

Order of Collector.

80. When an officer goes to any place for the purpose of holding a sale under this Act, and no sale takes place, either for the reason stated in section 79, or because the demand of the distrainer has been previously satisfied without any intimation of such satisfaction having been given by the distrainer to such officer, the charge of one anna in the rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained property.

Levy of charge when sale-officer attends, and no sale takes place.

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

Recovery from owner.

In every other case it shall be paid by the distrainer, and may be recovered by attachment and sale of his property under the warrant of the Collector of the District or Assistant Collector:

Recovery from distrainer.

Provided that in no case shall a larger amount than ten rupees be recoverable under this section.

Limit to charge.

81. When a suit has been instituted to contest the demand of a distrainer, and the distrained property has not been released on security, if the demand or any portion of it is adjudged to be due, the Collector of the District or Assistant Collector shall issue an order to the officer authorizing the sale of such property;

Order of sale when amount adjudged due.

and, on the application of the distrainer within five days from the receipt of such order by the officer, such officer shall publish a second proclamation in the manner prescribed in section 69, fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation;

Second proclamation of sale.

and, unless the amount adjudged to be due with the costs of distress be paid, shall proceed to sell the property in the manner hereinbefore provided.

Sale on failure to pay debt and costs.

82. (*a*) In all suits instituted to contest the distrainer's demand, he shall be required to prove the arrear in the same manner as if he had himself brought a suit for the amount under the provisions hereinafter contained.

In suit to contest his demand, distrainer to prove arrear.

(*b*) If the demand or any part thereof is found to be due, the Collector of the District or Assistant Collector shall make a decree for the amount in favour of the distrainer, and such amount may be recovered by sale of the property, as provided in the last preceding section, if the distress has not been withdrawn;

Recovery of amount decreed in favour of distrainer.

and, if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter,

or if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety.

(*c*) If the distress is adjudged to be vexatious or groundless, the Collector of the District or Assistant Collector, besides directing the release of the distrained property, may award such compensation to the plaintiff as the circumstances of the case require.

Compensation in case of vexatious distress.

83. (*a*) If any person claim 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 conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand.

Suit by person claiming property distrained for arrears alleged to be due from another.

(*b*) When any such suit is instituted, the property may be released upon security being given for the value of the same.

Release of property on security being given.

(*c*) If the claim is dismissed, the Collector of the District or Assistant Collector shall make an order for the sale of the property, or for the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

Order of Collector when claim dismissed.

(*d*) If the claim is upheld, the Collector of the District or Assistant Collector shall decree the release of the distrained property with costs, and such compensation (if any) as the circumstances of the case require:

Decree for release and compensation when claim upheld.

(*e*) Provided that no claim to any produce of land liable to distress under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any civil Court prevail against such prior claim.

Saving of prior claim of person entitled to rent of land.

84. If, in any case in which property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, the right to distrain for such arrears is claimed by or on behalf of any person other than the distrainer, on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by him before and up to the time of the commencement of the suit shall be enquired into, and in deciding the suit the result of such inquiry shall be taken into consideration:

Procedure where right to distrain is claimed by person other than distrainer.

Provided that the decision of the Collector of the District or Assistant Collector shall not affect the right of any person who may have a legal title to the rent of the land to establish his title by suit in the civil Court if instituted within one year from the date of the decision.

Saving of right to sue in civil Court.

85. If 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, is prevented by any sufficient cause from bringing a suit to contest the demand or to try the right to the property, as the case may be, within the period allowed by section 69 or 83, and his property is in consequence sold, he may, nevertheless, institute a suit under this Act to recover compensation for such distress and sale.

Persons prevented from suing in time to save property from sale may sue for damages.

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

Wrongful acts of distrainer.

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

or if the distress is not immediately withdrawn when it is required to be withdrawn by any provision of this Act,

the owner of the property may institute a suit under this Act to recover compensation for any injury which he has thereby sustained through any act or omission mentioned in the former part of this section.

87. If any person not empowered to distrain property under section 56, 57 or 59, nor employed for the purpose under a written authority by a person so empowered, fraudulently distrains or sells, or causes to be sold, any property under colour of this Act, the owner of the property so distrained or sold may institute a suit under this Act to recover compensation from such person for any injury which the plaintiff has sustained from the distress or sale,

Suit by owner against person distraining or selling without authority.

and the defendant shall be held to have committed criminal trespass, and shall be subject to the penalties provided for that offence by the Indian Penal Code, in addition to any damages which may be awarded against him in such suit.

Penalty in addition to damages.

88. Provided that every suit instituted under any of the three last preceding sections shall be commenced within the period allowed by section 94.

Limitation of suits under sections 85, 86, 87.

89. (*a*) If any person resists a distress of property duly made under this Act, or forcibly or clandestinely removes any distrained property, the Collector of the District or Assistant Collector in charge of the Sub-division, upon complaint being made within fifteen days from the date of such resistance or removal, may cause the person accused to be arrested and brought with all convenient speed before the Collector or Assistant Collector, who shall, if possible, proceed forthwith to try the case.

Procedure in case of resistance of distress.

(*b*) If the case cannot be at once heard, the Collector of the District or Assistant Collector may, if he think fit, require the party arrested to give

security for his person, and, in default of such security, may commit him to the civil jail until the case is tried,

and if the offence be proved and the offender be the owner of the property concerned, the Collector of the District or Assistant Collector may order him to be imprisoned in the civil jail for a term not exceeding six months, unless the whole arrear due to the distrainer, with all reasonable expenses and costs, is previously to the expiration of such term paid or levied under warrant of the Collector of the District or Assistant Collector by distress and sale of the property of the offender.

(*c*) If the offender be not the owner of the property concerned, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred rupees, or, in default of payment thereof, to imprisonment in the civil jail for a term which may extend to two months.

90. All proceedings of officers distraining, or assisting distrainers, or holding sales, under this chapter, shall be subject to the revision and orders of the Collector of the District or Assistant Collector in charge of a Sub-division of the District.

Proceedings of officers subject to revision and orders of Collector.

CHAPTER IV.

PROCESS.

91. (*a*) Every process issued by a Collector of a District or Assistant Collector under this Act shall be under his seal and signature, and shall be served or executed by the Názir, or by such other officer as the Collector of the District or the Assistant Collector may direct, at the cost of the party at whose instance it is issued.

Mode of serving process.

(*b*) The amount of such cost, and, in the case of summons to a witness, the sum required for his travelling expenses, shall be deposited in Court before the process is issued:

Deposit before issue.

(*c*) Provided that, if in any case the Collector of the District or the Assistant Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

Power to direct service gratis.

92. Any resistance or opposition to the lawful process of a Collector of the District or Assistant Collector under this Act may be punished by him according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of civil justice.

Punishment for resisting process.

When, in any such case, the offender is not present, the Collector of the District or Assistant Collector may summon him to answer to the charge: and, if after due service of the summons he fails to attend, may issue a warrant for his arrest.

Power to issue summons and warrant.

CHAPTER V.

JURISDICTION OF COURTS.

93. Except in the way of appeal as hereinafter provided, no Courts other than Courts of Revenue shall take cognizance of any dispute or matter in which any suit of the nature mentioned in this section might be brought, and such suits shall be heard and determined in the said Courts of Revenue in the manner provided in this Act, and not otherwise:

Suits cognizable by revenue Courts only.

(*a*) suits for arrears of rent, or, where rent is payable in kind, for the money-equivalent of rent, on account of land or on account of any rights of pasturage, forest-rights, fisheries or the like;

(*b*) suits to eject a tenant for any act or omission detrimental to the land in his occupation or inconsistent with the purpose for which the land was let;

(*c*) suits to cancel a lease for the breach of any condition binding on the tenant, and which, by law, custom or special agreement, involves the forfeiture of the lease;

(*cc*) suits for compensation for, or to prohibit, any act, omission or breach mentioned in clause (*b*) or clause (*c*);

(*d*) suits for the recovery of any over-payment of rent, or for compensation under section 48 or 49;

(*e*) suits for compensation for withholding receipt for rent paid;

(*f*) suits for contesting the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in the exercise of the said power, or for compensation for wrongful acts or omissions of a distrainer;

(*g*) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues for which the co-sharers may be responsible to the lambardár;

(*h*) suits by recorded co-sharers for their recorded share of the profits of a mahál, or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts;

(*i*) suits by muáfidárs, or assignees of the Government-revenue, for arrears of revenue due to them as such;

(*j*) suits by taluqdárs and other superior proprietors for arrears of revenue due to them as such;

(*k*) suits by recorded co-sharers to recover from a recorded co-sharer who defaults arrears of revenue paid by them on his account.

94. Suits for arrears of rent or revenue, or for a share of the profits of a mahál, or of village-expenses or other dues, shall not be brought after three years from the day on which the arrears or share became due.

Limitation of suits under this Act.

Suits relating to distress, not being suits to contest the demand or to try the right to the property, shall not be brought after three months from the day on which the right to sue accrued:

All other suits must be brought within one year from the day on which the right to sue accrues, unless otherwise specially provided for in this Act.

The day on which the arrears become due or the day on which the right to sue accrues (as the case may be) shall be excluded in computing the periods of limitation prescribed by this section.

In the absence of any express agreement among the co-sharers and of any order by the Settlement-officer under the North-Western Provinces Land-revenue Act, 1873, section 65, clause (*g*), the

Board may from time to time, with the previous sanction of the Local Government, make rules for fixing the dates on which profits shall be divisible by the lambardárs.

95. No Courts other than Courts of revenue shall take cognizance of any dispute or matter on which any application of the nature mentioned in this section might be made: and such applications shall be heard and determined in the said Courts in manner provided under this Act, and not otherwise:—

Applications cognizable by revenue Courts only.

(*a*) Application to determine the nature and class of a tenant's tenure, under section 10.

(*b*) Application by a landholder, or his agent, to compel a patwárí to produce his accounts relating to land.

(*c*) Application to resume rent-free grants under section 30, or to assess to rent land previously held rent-free.

(*d*) Application from a landholder to eject a tenant under section 35, or to have a notice of ejectment issued and served under section 38.

(*e*) Applications made by a tenant under section 39.

(*f*) Application from a landholder, under section 40, for assistance to eject a tenant.

(*g*) Application from a tenant or landholder to determine the value of any standing crop, or ungathered products of the earth, belonging to the tenant and being on the land at the time of his ejectment, under section 42.

(*h*) Application by a landholder to determine rent payable for land used by a tenant for the purpose of tending or gathering in the crop, under section 42.

(*i*) Application by a landholder or tenant for assistance in the division or appraisement of a standing crop, under section 43.

(*j*) Application by a landholder or tenant to determine compensation for improvements of land.

(*k*) Application by a tenant for leave to deposit rent.

(*l*) Application for enhancement or determination of rent.

(*m*) Application for compensation for wrongful dispossession.

(*n*) Application for the recovery of the occupancy of any land of which a tenant has been wrongfully dispossessed.

(*o*) Application for abatement of rent.

(*p*) Application for leases or counterparts, and for the determination of the rates of rent at which such leases or counterparts are to be delivered.

(*q*) Application under section 7 to have the holding of an ex-proprietary tenant divided off.

(*r*) Application under section 22A to survey land.

(*s*) Application under section 33A to have a notice of relinquishment declared invalid.

(*t*) Application to take out of deposit any amount deposited under section 55A.

For the purposes of the Court-fees Act, 1870, applications under clauses (*c*), (*l*), (*m*), (*n*), (*o*) and (*p*) of this section shall be deemed to be plaints in suits.

95A. When any order has been made on an application under this Act, no process for the execution of such order shall be issued on an application made after the lapse of one year from the date of such order, except when special provision is otherwise made in this Act.

Limitation of process of execution on applications.

96. (*a*) All applications under section 95 shall be made in the district in which the land, crops or products referred to is or are situate.

Points of procedure relating to applications under section 95.

(*b*) All orders passed on applications under section 95 shall be proved in the same manner, and when proved shall have the same effect, as if they were judgments of the civil Courts.

(*c*) In cases wherein a specific sum of money is adjudged to be due, or any costs or damages are awarded, all such orders may be executed by any process in use for the recovery of an arrear of revenue or rent.

(*d*) In cases wherein possession of immoveable property is adjudged, the officer making the award may deliver over possession in the same manner, and with the same power, in regard to contempts, resistance and the like, as may be lawfully exercised by the civil Courts in execution of their own decrees.

(*e*) Applications under clauses (*m*) and (*n*) of section 95 shall not be brought after six months from the date of the wrongful dispossession.

96A. All suits and applications under this Act may, with the consent of the parties, be referred to arbitration under section 220 to section 231 (both inclusive) of the North-Western Provinces Land-revenue Act, 1873.

Reference to arbitration.

97. The Local Government may invest any officer with the powers of an Assistant Collector of the first or second class under this Act, and may at any time withdraw such powers.

Power to invest officers with Assistant Collector's powers, and withdraw them.

98. Assistant Collectors of either class shall have, as such, power to try suits and applications of the following descriptions:—

Suits and applications cognizable by Assistant Collectors.

(*a*) suits for arrears of rent or the money equivalent of rent on account of land, or on account of any rights of pasturage, forest rights, fisheries or the like;

(*b*) suits for compensation for withholding receipts for rent paid, under section 48;

(*c*) suits to contest the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in exercise of the said powers, or for compensation for wrongful acts or omissions of a distrainer;

(*d*) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues, for which the co-sharers may be responsible to the lambardár;

(*e*) suits by muáfídárs or assignees of the Government-revenue for arrears of revenue due to them as such;

(*f*) suits by taluqdárs or other superior proprietors for arrears of revenue due to them as such;

(*g*) applications by a landholder, or by an agent employed by a landholder, to compel the production of accounts by patwáris;

(*h*) applications by a tenant or landholder to determine the value of any standing crops or ungathered products of the earth, and being on the land at the time of his ejectment, under section 42;

(*i*) applications by a landholder to determine the amount of rent payable by a tenant using land for the purpose of tending or gathering in crops, under section 42;

(*j*) applications by a landholder or a tenant for assistance in the division or appraisement of standing crops) under section 43;

(*k*) applications by tenants for leave to deposit rent;

(*l*) suits under section 93, clause (*k*), to recover arrears of revenue.

(*m*) applications under section 22A to survey land.

99. Assistant Collectors of the first class, in addition to the suits and applications specified in section 98, shall have power to try suits and applications of the following descriptions:—

Additional suits and applications triable by Assistant Collectors, first class.

(*a*) suits to eject a tenant for any act or omission detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let;

(*b*) suits to cancel a lease for any breach of any condition binding on the tenant;

(*bb*) suits for compensation for, or to prohibit, any act, omission or breach mentioned in clause (*a*) or clause (*b*);

(*c*) suits for the recovery of any over-payment of rent or for compensation, under section 48 or section 49;

(*d*) suits by co-sharers for their shares of the profits of a mahál or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts;

(*e*) applications by a landholder to eject a tenant, under section 35;

(*f*) applications under section 39 by a tenant contesting notice of ejectment;

(*g*) applications by a landholder under section 40, for assistance to eject a tenant on whom notice of ejectment has been served;

(*h*) applications for compensation for wrongful dispossession;

(*i*) applications by a landholder or tenant to determine the amount to be paid as compensation for improvements;

(*j*) applications to recover the occupancy of any land from which a tenant has been wrongfully dispossessed by the landholder;

(*k*) applications under section 30 for the resumption of rent-free grants or for the assessment to rent of land hitherto held rent-free;

(*l*) applications under section 7 to have the holding of an ex-proprietary tenant divided off;

(*m*) applications under section 33 A to have a notice of relinquishment declared invalid;

(*n*) applications to take out of deposit amounts deposited under section 55A.

100. In addition to the powers specified in sections 98 and 99, an Assistant Collector of the first class, specially empowered by Government in this behalf, shall have power to try the following applications:

Additional applications triable by Assistant Collector, first class, with special powers.

(*a*) applications for enhancement or determination of rent;

(*b*) applications for abatement of rent;

(*c*) applications for leases or counterparts, and the determination of the rates of rent at which such leases or counterparts are to be delivered;

(*d*) applications to determine the nature or class of a tenant's tenure.

101. The Collector of the District, or any Assistant Collector in charge of a sub-division of a district, may make over any case, or class of cases, for inquiry and decision, from his own file, to any of his subordinates competent to deal with such case or class of cases under the provisions of this Act.

Power to make over cases.

102. Collectors of Districts, and Assistant Collectors in charge of sub-divisions of districts, may, respectively, withdraw any case or class of cases from any officers subordinate to them, and may deal with such case or class of cases themselves, or refer it for disposal to any other such Revenue-officer competent to deal with the same under the provisions of this Act.

Power to withdraw cases.

103. The Collector of the District may exercise—

Powers exerciseable by Collector of District.

(*a*) all powers given by this Act to Collectors of Districts,

(*b*) all powers which by this Act are conferred, or can be conferred, on Assistant Collectors.

The Local Government may invest any officer in charge of a sub-division of a district with all or any of the powers conferred by this Act on a Collector of a District.

Investment of officer in charge of sub-division with powers of Collector of District.

In conferring powers under this Act, the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

Mode of conferring powers.

CHAPTER VI.

PROCEDURE IN SUITS UP TO JUDGMENT.

104. Suits under this Act shall be instituted in the district in which the subject of the suit, or some part thereof, is situate,

Place of instituting suits.

and all such suits shall be commenced by presenting to the Court a plaint, which shall contain—

Plaint.

(*a*) the name, description and place of abode of the plaintiff;

(*b*) the name, description and place of abode of the defendant, so far as they can be ascertained;

(*c*) the subject-matter of the claim, and its amount or value computed according to the Court-fees Act, 1870; and

(*d*) the date on which the right to sue accrued.

105. For the purpose of suing or being sued under this Act, the managers of mahals, whether held under the Court of Wards or under direct management, shall be deemed to be landholders.

Managers of mahals to be, for purpose of litigation, deemed landholders.

106. No co-sharer in an undivided property shall, in that character, be entitled separately to sue a tenant under this Act, unless he is authorized to receive from such tenant the whole of the rent payable by such tenant; but nothing in this section shall affect any local customs or any special contract.

Suits by co-sharers in undivided property.

107. The plaint shall be presented by the plaintiff, or by an agent duly authorized on his behalf, who has personal knowledge of the facts of the case, or by an agent accompanied by a person who has such knowledge.

Plaint by whom presented.

The plaint shall be subscribed and verified at the foot by the plaintiff or his agent in the manner following, or to the like effect:—

Verification of plaint.

"I, *A. B.*, the plaintiff named in the above plaint, do declare that what is stated therein is true to the best of my knowledge and belief."

If the plaint contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

False averment.

108. If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Court at the time of presenting his plaint.

Document relied on by plaintiff to be presented with plaint.

Unless such document be so delivered, or its non-production be sufficiently excused, or unless the Court see fit to extend the time for producing the same, it shall not afterwards be admitted.

Admission afterwards.

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

Procuring production of document in possession of defendant.

110. If the suit be for the recovery of an arrear of rent or revenue, or of a share of profits or village-expenses, or other dues under section 93, the plaint shall specify the name of the village and estate, and of the pargana or other local division in which the land is situate:

Plaint in suits for arrears of rent.

and, if the suit be for an arrear of rent alleged to be due from any tenant, the plaint shall also specify the quantity of land, and (where fields have been numbered in a Government-survey) the number of each field, and yearly rent of the land; the amount (if any) received on account of the year for which the claim is made; and in all cases coming under this section the plaint shall specify the amount in arrear, and the time in respect of which it is alleged to be due.

111. If the suit be for the ejectment of a tenant from any land, the plaint shall describe (as circumstances may require) the extent, situation and designation of the land; and, if necessary for its identification, shall set forth its boundaries.

Plaint in suits for ejectment.

112. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Court may, at its discretion, return it to the plaintiff, or allow it to be amended.

Return or amendment of plaint.

112A. The Court may, on or before the first hearing upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

Court may dismiss or add parties.

and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

No person shall be added as a plaintiff without his own consent thereto.

Consent of person added as plaintiff.

All parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and the proceedings as against them shall be deemed to have begun only on the service of such summons:

Defendants added to be served.

Provided that, when a defendant dies and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

112B. Where a defendant is added, the plaint, if previously filed, shall, unless the Court directs otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

When defendant added, plaintiff to amend.

112C. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for mis-joinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing, and any such objection not so taken shall be deemed to have been waived by the defendant.

Time for taking objections as to non-joinder or mis-joinder of parties.

112D. If the plaint be admitted, the plaintiff shall present as many copies on plain paper of the plaint as there are defendants, unless the Court, by reason of the length of the plaint, or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required in the suit, in which case he shall present such statements.

Procedure on admitting plaint.

Concise statements.

113. If the plaint be in proper form, the Court, except as otherwise hereinafter specially provided, shall direct the issue of a summons to the defendant,

Issue of summons.

and if the plaintiff require the personal attendance of the defendant, and satisfy the Court that such attendance is necessary, or the Court of its own accord require such attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons.

Order for personal attendance or appearance by agent.

If the plaintiff or the Court does not require the personal attendance of the defendant, the summons shall order the defendant to appear either personally or by an agent duly authorized on his behalf, who has personal knowledge of the subject, or is accompanied by a person who has such personal knowledge.

114. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held,

Fixing of day to be specified in the summons.

and the summons shall order the defendant to produce any document in his possession or power of which the plaintiff demands inspection, or upon which the defendant relies in support of his defence.

Order to produce documents.

It shall also direct him to bring with him his witnesses, if they are willing to attend without issue of process,

Order to bring witnesses.

and it shall be in the form (D) contained in the first schedule hereto annexed, or to the like effect.

Form of summons.

It shall be accompanied with one of the copies or concise statements mentioned in section 112 D.

Copy or statement annexed to summons.

115. The summons shall be served by delivering a copy thereof to the defendant personally when practicable;

Mode of serving summons.

or, if the copy cannot be delivered to the defendant personally, by affixing copy of the summons to some conspicuous part of his usual residence, and also affixing a copy of the same in the Court.

116. If the summons be served by delivering a copy to the defendant personally, the Názir shall endorse on the summons the fact of such service.

Endorsement on summons.

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

117. If the usual residence of the defendant be in another district, the summons shall be sent by the public post to the Collector of such district, who shall issue the summons, and return the same, after service, with the prescribed endorsement, to the officer by whom it was transmitted to him.

Service of summons in another district.

117A. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post, if there be postal communication between such place and the place where the Court is situate.

Service when defendant resides out of British India and has no agent to accept service.

117B. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent by post or otherwise for the purpose of being served upon the defendant; and if the Resident or Agent return the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of such service.

Service through British Resident or Agent of Government.

Deposit of cost of serving summons or warrant.

118. The amount of the cost of serving the summons, or, if a warrant be issued as provided in the next following section, of serving the warrant,

shall in all cases be deposited in Court by the plaintiff within such time before the issue of such summons or warrant as is fixed by the Court issuing the process.

If the said amount be not so deposited (except where the Court in exercise of the discretion reserved to it in section 91 allows the summons to be served gratis), the case shall be struck out of the list of pending suits;

Effect of failure to deposit.

but in such case the plaintiff may present another plaint at any time within the period allowed by the rules herein contained for the limitation of suits.

119. (*a*) If in any suit against a tenant for the recovery of an arrear of rent, or in any suit for the recovery of an arrear of revenue, or a share of profits or village-expenses or other dues, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, the plaintiff shall present, with his plaint, an application for the issue of such warrant.

Procedure when plaintiff desires issue of warrant of arrest.

(*b*) When such application is presented, the Court shall examine the plaintiff or his agent, and inspect the documents adduced by him in support of his claim; and if *primâ facie* it appear to the Court that the claim is well founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Court may issue a warrant for his arrest.

(*c*) The Court shall fix a reasonable time for the return of the warrant, and the officer entrusted with the service thereof shall, at the time of arresting the defendant, deliver to him one of the copies or concise statements mentioned in section 112D and a notice requiring him, if he contest the claim, to bring with him any document upon which he relies in support of his defence.

(*d*) Every warrant issued and notice delivered under this section shall be respectively in the forms (E) and (F) in the first schedule hereto annexed, or to the like effect.

120. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Court.

Procedure after arrest of defendant.

121. When a defendant is brought before the Court under warrant, the Court shall, with all convenient speed, proceed to try the case in the manner hereinafter provided,

Procedure when defendant is brought before Court under warrant.

and if the suit cannot be at once adjudicated, the Court may, if it think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is pending, or until execution of the final decree which may be passed thereon,

and may commit him to the civil jail to be there detained until he furnishes such security or deposits such sum as the Court orders.

The security-bond shall be in the form (G) contained in the first schedule hereto annexed, or to the like effect.

Form of security-bond.

122. If the defendant cannot be arrested under the warrant, the Court, on the application of the plaintiff, shall either postpone the case for such period as to it seems proper, in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation, to be affixed in its own office and at the residence of the defendant, appointing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice, at the residence of the defendant.

Procedure when defendant cannot be arrested under warrant.

If the defendant appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding section.

123. If it appear to the Court that the arrest of the defendant was applied for without reasonable cause, the Court may, in its decree, award to him such sum not exceeding one hundred rupees as it may deem a reasonable compensation for any injury or loss which he has sustained by reason of such arrest, or of his detention in jail during the pendency of the suit.

Compensation for arrest applied for without reasonable cause.

124. If on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case may be struck off, with liberty to the plaintiff to bring a fresh suit, unless precluded by the rules herein contained for the limitation of suits.

Consequence of neither party appearing on day fixed.

125. If on any such day only the defendant appears, the Court shall pass judgment against the plaintiff by default, unless the defendant admits the plaintiff's right to the relief which he claims, in which case the Court shall proceed to give judgment for the plaintiff upon such admission without costs:

Judgment by default.

Judgment upon admission of claim.

Provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

Proviso.

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

If plaintiff only appear, Court may proceed *ex parte*.

127. If the defendant appear on any subsequent day to which the hearing of the suit is postponed under the last preceding section, the Court may, upon such conditions, if any, as to costs or otherwise as it thinks proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

If defendant appear on adjourned hearing, Court may allow him to be heard in answer.

128. (*a*) No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance.

No appeal from judgment *ex parte* or by default;

(*b*) But in all such cases, if the party against whom judgment has been given appears, either in person or by agent, if a plaintiff, within fifteen days from the date of the Court's decree, and, if a defendant, within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period, and shows sufficient cause for his previous non-appearance, and satisfies the Court that there has been a failure of justice, the Court may, upon such terms as to costs or otherwise as it thinks proper, revive the suit and alter or rescind the judgment according to the justice of the case.

but Court may revive suit and alter or rescind judgment.

(*c*) But no judgment shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

Adverse party to be summoned.

129. When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned, for sufficient reason to be recorded by the Court, the Court shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other party or his agent.

Examination.

130. If either of the parties be not bound to attend personally, any agent by whom he appears, or any person accompanying such agent, may be examined and cross-examined in like manner as the party himself would have been if he had attended personally.

Examination and cross-examination of agents.

131. At the time of the examination, the defendant may, if he think fit, file a written statement in his defence.

Defendant may file written statement.

Such written statement shall be subscribed and verified in the manner hereinbefore provided for subscribing and verifying plaints, and if it contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

Verification of written statement.

False averment.

132. The examination of the parties or their agents, or such other persons as aforesaid, shall be according to the law for the time being in force relative to the examination of witnesses in the civil Courts.

Mode of examination.

The substance of the examination shall be reduced to writing in the mother-tongue of the presiding officer, and shall be filed with the record.

133. If either of the parties produce a witness on such day, the presiding officer may take the evidence of such witness.

Witness produced may be examined.

134. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit:

Document relied on by defendant to be produced at first hearing.

and unless such document be so delivered, or its non-production be sufficiently excused, or unless the presiding officer see fit to extend the time for delivering the same, it shall not afterwards be admitted.

135. If after the examination required by section 129, and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can be properly made without further evidence, the Court shall make its decree accordingly.

Decree after examination, if no further evidence is required.

136. If on such examination as aforesaid either party is absent and his agent is unable to answer any material question relating to the case which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the case to a future day, and direct that the party whose agent was unable to answer as aforesaid shall attend in person on such day;

Party to attend in person when his agent is unable to answer.

and if such party fails to appear in person on the day appointed, the Court may pass judgment as in case of default, or make such other order as it deems proper in the circumstances of the case.

Judgment or order if he fail to appear.

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

Procedure when parties at issue on question requiring evidence.

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

Parties to produce witnesses or procure attendance by summons.

139. The law and rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination, remuneration and punishment of witnesses, whether parties to the case or not, in cases before the civil Courts, shall, except so far as may be inconsistent with the provisions herein contained, apply to suits under this Act.

Provisions regarding attendance, examination, &c., of witnesses.

140. If on the day fixed for the trial of any issue neither of the parties appear, the case may be struck off, with liberty to the plaintiff to bring a fresh suit.

Case to be struck off if neither party appears.

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

Trial of issue *ex parte*.

141. When suits under this Act are instituted or defended by agents employed in the collection of rent or management of land, in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such agents;

Provisions to apply when suits are instituted or defended on behalf of landholders by agents.

and anything which by this Act is required or permitted to be done by a party in person may be done by any such agent as aforesaid.

Processes served on any such agent shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person:

Processes served on such agents.

and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such agent.

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

Personal attendance of female plaintiff or defendant when not required.

143. Any party to a suit may employ an authorized agent to conduct the case on his behalf:

Parties may employ agents.

but the employment of such agent shall not excuse the personal attendance of the plaintiff or defendant, in cases where his personal attendance is required by the summons, or any order of the Court;

Personal attendance when not excused.

and no fee for any agent shall be charged as part of the costs of suit in any case under this Act, unless the Court certifies that, under the circumstances of the case, such fee is proper to be allowed.

Fee for agents not chargeable as costs.

144. The Court may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit,

Court may grant time or adjourn hearing.

and may also, from time to time, in order to the production of further evidence, or for other sufficient reason to be recorded by the Court, adjourn the hearing of any case to such day as to it may seem fit.

145. The presiding officer may, at any stage of a case, cause a local enquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of Government, with the consent of the authority to whom such officer is subordinate, or may himself proceed to the spot and make such local enquiry in person.

Court may cause local enquiry and report, or may itself enquire.

The provisions of the law for the time being in force relative to local inquiries by Amins or Commissioners, under orders of the civil Courts, shall apply to any local inquiry made by any officer under this section,

Provisions applied to such inquiry.

and, so far as they are applicable, to inquiries made by the presiding officer of the Court in person.

In the latter case the presiding officer, after completing the inquiry, shall record such observations as appear to him appropriate, and the observations so recorded shall form part of the proceedings in the suit.

Record in case of inquiry by Court.

146. The defendant in any suit under this Act may pay into Court such sum of money as he thinks a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and such sums shall be paid to the plaintiff.

Defendant may pay admitted debt and costs into Court.

If the defendant deposit less than the sum claimed and the plaintiff elect to proceed in the case, and ultimately recover no further sum than has been paid into Court, the plaintiff shall be charged with any costs incurred by the defendant in the suit after such payment.

Plaintiff chargeable with subsequent costs if he proceed and recover no further sum.

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

No interest to plaintiff after date of deposit by defendant.

148. When, in any suit between a landholder and a tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the tenant is disputed on the ground that some third person has actually and in good faith received and enjoyed such rent before and up to the time when the right to sue accrued, such third person may be made a party to the suit,

In suits where right to receive rent is disputed, third person who has received it may be made a party.

and the question of such receipt and enjoyment of the rent by such third person may be enquired into, and the suit shall be decided according to the result of such enquiry:

Provided that the decision of the Court shall not affect the right of either party entitled to the rent of such land to establish his title by suit in the civil Court, if instituted within one year from the date of the decision.

Saving of right to sue in civil Court to prove title to rent.

149. Whenever a decree is given for the ejectment of a tenant, or the cancelment of his lease, on account of any act or omission by which the land in his occupation has been damaged, or which is inconsistent with the purpose for which the land has been let, the Court may, if it think fit, allow him to repair such damage within one month from the date of the decree, or order him to pay such compensation, within such time, or make such other order in the case, as the Court thinks fit,

Court may allow tenant to repair damage caused by certain acts or omissions.

and if such damage be so repaired, or compensation so paid, or order obeyed, the decree shall not be executed.

150. Every judgment under this Chapter shall be pronounced in open Court.

Delivery of judgment.

151. The judgment shall be written in the mother-tongue of the presiding officer, and shall contain the reasons for the same, and shall be dated and signed by the presiding officer at the time it is pronounced:

Its language and contents.

Provided that, where his mother-tongue is not English, the judgment may be written in English, if he is able to write a clear and intelligible decision in that language.

When it may be in English.

151A. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

To direct payment of costs.

151B. Except as hereinbefore provided, the Court shall have full power to give and apportion costs of every suit in any manner it thinks fit; and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power; but if the Court directs that the costs of any suit shall not follow the event, the Court shall state its reasons in writing.

Power of Court as to costs.

151C. The Court may direct that the costs payable to one party by another shall be set off against sums admitted or found in the suit to be due from the former to the latter.

Costs may be set off.

151D. Except as hereinbefore provided, the Court may give interest at any rate not exceeding six per cent. per annum, on any sum decreed or found to be due, or on costs.

Power to give interest.

152. Every officer invested with powers under this Act may hold a Court for hearing and determining suits under this Act in any place within the limits of the district to which he is appointed.

Power to hold Court in any place within district.

Every hearing shall be in open Court, and the parties to the suit or their authorized agents shall have due notice to attend in such place.

CHAPTER VII.

PROCEDURE IN EXECUTION OF DECREES IN SUITS.

153. If the decree be for the ejectment of any tenant from land occupied by him, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree thereto.

Mode of executing decree for ejectment of tenant.

If any opposition is made to the execution of the order for giving such possession or occupancy, by the party against whom the order is made, the Magistrate, on the application of the Collector of the District or Assistant Collector, shall give effect to the same.

Magistrate to give it effect in case of opposition.

154. If the decree be for the payment of arrears of rent or revenue, or of money, and the defendant has been committed to jail, or appear in Court pursuant to the conditions of any security-bond given under

Power to order detention in, or commitment to, civil jail in certain cases.

section 121, the Collector of the District or Assistant Collector may order that he be detained in, or committed to, the civil jail, unless he immediately pays into Court the amount of the decree with costs, or otherwise complies with the terms of the decree.

155. If the judgment-debtor has given security for his appearance, and is not present when judgment is pronounced, and the surety fails to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety.

Process against surety on failure to deliver judgment-debtor into custody.

156. (*a*). A writ of execution may be issued against either the person or the property of a judgment-debtor;

Process of execution against person or property, but not both.

but process shall not be issued simultaneously against both person and property.

(*b*). Such writ may be issued on the oral application of the judgment-creditor or his agent, made at the time the decree is passed, or, thereafter, upon the written application of the judgment-creditor or his agent.

Applications on which it may issue.

(*c*). Writ of execution against the person or moveable property of a debtor shall be in the form (II) or (I) contained in the first schedule hereto annexed, or to the like effect.

Form of writ of execution.

157. Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor;

Execution against moveable property.

but, if the creditor is unable to furnish such list, he may apply for a general attachment of the debtor's effects, to the amount of the judgment and costs.

In either case, the property to be seized shall be pointed out to the officer entrusted with execution of the process, by the creditor or his agent:

Provided that no implements of husbandry, or cattle actually employed in agriculture, or tools of artisans, or necessary wearing apparel of the judgment-debtor, his wife or children, shall be attached under this section.

Articles exempted from attachment.

158. Every writ of execution shall bear date on the day on which it is signed by the Collector of the District or Assistant Collector, and shall continue in force for such period as he may direct (not being more than sixty days) calculated from such date.

Date and duration of writs.

159. Second and successive writs of execution may be issued by order of the Collector of the District or Assistant Collector on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

Second and successive writs.

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

After one year execution not to issue without notice to party concerned.

161. Execution on a judgment shall not issue against the heir or other representative of a deceased party, unless notice to appear and be heard has been previously served on such heir or other representative.

Execution not to issue against heir or representative of deceased party without notice.

162. No process of execution shall be issued on a judgment under this Act, when the application for the issue of such process is made after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred rupees;

No process of execution after three years, unless judgment be for sum exceeding 500 rupees.

in which case the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the civil Court.

Regulation of period in such case.

163. If a writ issues for taking any person in execution, the officer charged with the execution of the writ shall bring him with all convenient speed before the Collector of the District or Assistant Collector.

Procedure in execution of writ against person.

If such person does not then deposit in Court the full amount specified in the writ,

or make such arrangement for the payment of the same as is satisfactory to the judgment-creditor,

or satisfy the Collector of the District or Assistant Collector that he has no present means of paying the same amount,

the Collector of the District or Assistant Collector shall send him to the civil jail, there to remain for such time as may be directed by a warrant addressed to the keeper of the jail, unless in the meanwhile he pays the full amount for the payment of which he is liable under the decree:

Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three months when the amount decreed (exclusive of costs) does not exceed fifty rupees,

Limit of imprisonment.

or six months when such amount does not exceed five hundred rupees,

or two years in any other case.

164. (*a*.) Any person once discharged from jail shall not be imprisoned a second time under the same judgment.

No person to be imprisoned a second time under same judgment.

(*b*.) If the amount due under the decree does not exceed one hundred rupees, the Collector of the District or Assistant Collector may declare him absolved from further liability under that decree, and such liability shall thereupon be extinguished.

When further liability extinguished.

(*c*.) In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to him from attachment in execution of the same.

When not extinguished.

165. Every person applying for the issue of a warrant of arrest under section 119, or suing out process of execution against the person of any judgment-debtor, shall deposit in Court, when the warrant issues, diet-money for thirty days at such rate not exceeding two annas per diem, as the Collector of the District or Assistant Collector may direct, unless for any special reason he directs that deposit be made at a higher rate, which shall not exceed four annas per diem.

Diet-money to be deposited at time of issue of warrant.

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

Effect of non-payment of diet-money in advance during imprisonment.

167. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit,

Diet-money spent to be costs in suit.

and any diet-money not so spent shall be returned to the person who deposited the same.

Refund of remainder.

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

Procedure in executing writ against moveable property.

A copy of the said proclamation and list shall be sent to the Collector of the District or Assistant Collector, and shall be affixed in his office.

169. No moveable property taken in execution under this Act shall be sold before the expiration of ten days next after the day on which such property is so taken.

Time to elapse before sale of moveable property.

Until such sale the property shall be deposited in some fit place, or it may remain in custody of some fit person approved by the officer executing the writ.

Custody meanwhile.

The provisions of sections 74 to 78 (both inclusive), so far as the same are applicable, shall apply to sales under this section.

Provisions applied to sale.

170. No irregularity in publishing or conducting a sale of any moveable property under an execution shall vitiate such sale.

Sale not vitiated by irregularity.

But any person injured by such irregularity may recover compensation for such injury by suit in the civil Court:

Right to sue for compensation.

Provided that such suit be brought within one year from the date of sale.

Limitation.

171. In the execution of any decree for the payment of arrears of rent or revenue, or of money, under this Act, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor, except the materials of buildings actually occupied by a debtor who is an agriculturist.

In executing decrees for money when execution may be applied for against immoveable property.

172. If the immoveable property against which execution is applied for be other than a mahál, or share of a mahál, process shall be issued in the same manner as for the attachment and sale of moveable property: and the provisions of sections 168, 169 and 170 shall be applicable.

Process when the immoveable property is not a mahál.

In the event of the sale of such property being completed, possession thereof shall be given to the auction-purchaser by the Collector of the district in which such property is situate.

Possession to be given to auction-purchaser.

173. When such property is a mahál, or a share of a mahál, the decree shall be sent for execution to the Collector of the District in which such property is situate,

Procedure when it is a mahál.

and if the judgment-debtor satisfies the Collector of the District that there is reasonable ground to believe that the amount of the judgment-debt may be raised by mortgage of the property, or by letting it on lease, or by disposing by private sale of a portion of the property or any other property belonging to the judgment-debtor, the Collector of the District may, on the application of the judgment-debtor, postpone the sale for such period as the Collector of the District thinks proper to enable the judgment-debtor to raise the amount,

and if the judgment-debtor satisfies his creditor, the execution shall be stayed, and the Collector of the District shall report the fact to the Court by which the decree was made.

174. If the judgment-debtor obtaining a postponement of the sale fails to satisfy his creditor within the period so fixed, or, if the judgment-debtor does not apply for, or applies for but does not obtain, a postponement of the sale, and the Collector of the District considers that the sale of the mahál or share is inexpedient, and that satisfaction of the decree may be made by means of a temporary alienation of the property,

Procedure where judgment-debtor fails to satisfy creditor within further time, or Collector thinks sale inexpedient.

the Collector of the District shall cause an accurate rent-roll of the property to be prepared, and ascertain the annual income derivable therefrom.

If, in the opinion of the Collector of the District, such income is sufficient to pay off the judgment-debt with interest at six per cent. per annum, within any period not exceeding fifteen years from the date of the decree, he may transfer the property to the judgment-creditor, or if the judgment creditor refuse to take it, to some other person, or he may hold it under his own management, for such period not exceeding fifteen years, as may be sufficient for the recovery of the debt with interest as aforesaid, and on such conditions as to the payment of such debt and interest as he deems expedient.

Power to transfer property to judgment-creditor.

Power to hold property under management.

Orders passed under this section and section 173 shall be subject to revision by the Commissioner of the Division and the Board, but shall not be open to appeal to the civil Court.

174A. When the property of a judgment-debtor which is transferred or held under management under section 174 includes any sír-land of such debtor, he shall, until such property is restored to him, be treated as an ex-proprietary tenant of such sír-land under section 7.

Proprietor to be treated as ex-proprietary tenant of sír-land.

175. If in the opinion of the Collector of the District the recovery of the debt under section 174 is impossible, or if the sale of the property appear to him advisable on other grounds, he shall report, through the Commissioner of the Division, the case for orders to the Board.

Report of case to Board.

176. On the receipt of such report, the Board may make, or cause to be made, such further endeavours for the recovery of the debt under the provisions of section 174, as to it may seem practicable.

Procedure on receipt of report.

177. If it appear to the Board that the debt cannot be recovered under section 174, or if the sale of the property appear to it advisable on other grounds, it shall order the property to be sold, in which case the sale shall be made under the rules in force for the sale of land for arrears of land-revenue, but without prejudice to the incumbrances (if any) to which such property may be subject.

Power to order sale of property.

178. If, before the day fixed for any sale of any property under this Act, a third party appear before the Collector of the District or Assistant Collector, and claim a right or interest to or in any of the property, he shall examine such party or his agent, according to the law for the time being in force relative to the examination of witnesses,

Examination of third party claiming interest in property.

and, if he see sufficient reason for so doing, may stay the sale of such property.

Stay of sale.

179. The Collector of the District or Assistant Collector may adjudicate upon such claim, and make such order as he thinks fit between the claimant and the plaintiff and defendant in the original suit.

Adjudication of such claims.

In trying such claim, the Collector of the District or Assistant Collector shall be guided by the rules contained in this Act, so far as they may be applicable.

Rules applied.

180. If the claimant fail to establish his right to the property taken in execution, the Collector of the District or Assistant Collector may, at the time of disposing of the case, order him to pay to the judgment-creditor the costs of the proceedings on the claim, and also such sum as the Collector or Assistant Collector thinks sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

Compensation awardable against claimant failing to establish right.

181. (*a.*) No appeal shall lie from any order passed under section 179 or section 180 by the Collector of the District.

No appeal from order under section 179 or 180.

(*b.*) But the party against whom the same is passed may institute a suit in the Civil Court to establish his right at any time within one year from the date of the order:

Right to sue in civil Court.

(*c.*) Provided that, if the order be for the sale of the property taken in execution, and the property is moveable the suit shall not be for the recovery of such property, but shall be for compensation from the judgment-creditor by whom it was brought to sale.

Proviso.

CHAPTER VIII.

APPEAL, REHEARING AND REVIEW.

(A).—From Decrees in Suits.

182. In suits under this Act, tried and decided by a Collector of a District or an Assistant Collector of the first class, his judgment shall be final.

Judgment of Collector of District or Assistant Collector of first class when final.

183. All decisions of the Assistant Collector of the second class in suits mentioned in section 93 shall be appealable to the Collector of the District, whose order thereon shall be final.

Appeal from decision of Assistant Collector of second class.

184. The petition of appeal shall be presented to the Collector of the District within thirty days from the date of the decree.

Time for presentation.

185. The Collector of the District may either dismiss the petition or may fix a day for hearing the appeal, and in that case he shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons.

Procedure on appeal.

If, on the day fixed for hearing the appeal, or any other day to which the hearing may be adjourned, the appellant does not appear in person or by an agent, the appeal may be dismissed for default.

If the appellant appears and the respondent does not appear in person or by an agent, the appeal may be heard *ex parte*.

186. If an appeal be dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Collector of the District to re-admit the appeal,

Re-admission of appeal.

and if it be proved to the satisfaction of the Collector of the District that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector of the District may re-admit the appeal.

187 After hearing the appeal, the Collector of the District shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits.

Judgment in appeal.

188. In suits in which the judgment of the Collector of the District or Assistant Collector is final, as provided in section 182, he may, upon the application of either party, if preferred within thirty days from the date of the decision, order the rehearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case, which the applicant had no knowledge of, or could not produce, at the time of trial.

Rehearing of suits not open to appeal.

189. Notwithstanding anything contained, in sections 182 and 183 an appeal shall lie to the District Judge from the decision of the Collector of the District or Assistant Collector of the first class, in all suits mentioned in section 93,

Appeal to District Judge.

in which the amount or value of the subject-matter exceeds one hundred rupees, or

in which the proprietary title to land has been determined between parties making conflicting claims thereto:

Provided that, where the amount or value of the subject-matter of the suits exceeds five thousand rupees, the appeal shall lie to the High Court.

Appeal to High Court.

190. The rules for the time being in force in regard to the time within which appeals from the decisions of civil Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the District Judge or High Court under this Act.

Rules as to time of presentation, &c., to apply.

191. The decisions of District Judges passed in regular appeal under this Act shall be open to special appeal to the High Court, in the same manner, and subject to the same rules, as the decisions of District Judges passed in regular appeal are open to special appeal under the Code of Civil Procedure and the Indian Limitation Act, 1877.

Special appeal to High Court from District Judge.

(B).—From Orders on Applications or relating to the Execution of Decrees.

(1) Assistant Collectors of the Second Class.

192. An appeal to the Collector of the District shall lie from all orders passed under this Act by an Assistant Collector of the second class.

Appeal from Assistant Collector of second class.

(2) Assistant Collectors of the First Class.

193. An appeal to the Commissioner of the Division shall lie from all orders passed by an Assistant Collector of the first class,

Appeal from orders of Assistant Collectors of first class on certain applications.

(*a*) on applications under section 99, where the amount or value of the subject-matter exceeds one hundred rupees,

(*b*) on applications under section 100.

194. An appeal to the Collector of the District shall lie from all other orders passed under this Act by an Assistant Collector of the first class, except—

Appeal from other orders of Assistant Collector of first class.

(*a*) orders on applications mentioned in section 98;

(*b*) orders on applications mentioned in section 99;

(*c*) orders passed in the course of a suit and relating to the trial thereof.

195. The orders of an Assistant Collector of the first class on the following applications shall be final, subject to revision by the Commissioner of the Division or the Board—

Final orders of Assistant Collector of first class.

(*a*) applications mentioned in section 98;

(*b*) applications mentioned in section 99 where the amount or value of the subject-matter does not exceed one hundred rupees.

(3) Collector of the District.

196. An appeal to the Commissioner of the Division shall lie from orders passed by the Collector of the District,

Appeal from certain orders of Collector of District.

(*a*) under section 99, when the amount or value of the subject-matter exceeds one hundred rupees,

(*b*) under section 100.

In all other cases orders under this Act passed by the Collector of the District shall be final, subject to revision by the Commissioner of the Division or the Board.

(4) Commissioner of the Division.

197. Save as provided by section 198, the orders of the Commissioner of the Division on appeals shall be final, subject to revision by the Board.

Finality of orders of Commissioner of Division.

198. An appeal from the decisions of the Commissioner of Division on appeals against orders passed by the Collector of the District or Assistant Collector on the applications mentioned in section 100 shall lie to the Board, except where the Commissioner of the Division dismisses the appeal.

Appeal to Board from his decisions on appeals against orders on applications mentioned in section 100.

In such case the provisions of section 199 shall apply.

199. The Board may at any time call for any case (other than a suit mentioned in section 189) which has come before any Commissioner of a Division, or any Court subordinate to him, and pass such orders thereon, consistent with this Act, as the Board thinks fit.

Power of Board to call for cases and pass orders thereon.

200. No appeal shall be brought to the Collector of the District after the expiration of thirty days, or to the Commissioner of the Division after the expiration of sixty days, or to the Board of Revenue after ninety days, from the date of the order complained of.

Time for appealing.

201. Any appeal under this Act may be admitted after the period of limitation prescribed therefor when the appellant satisfies the officer to whom he appeals that he had sufficient cause for not presenting the appeal within such period.

Admission of appeals after prescribed period.

No appeal shall lie against an order under this section admitting an appeal.

(5) Review.

201A. The Board may review and may rescind, alter or confirm any order made by itself, or by a single member, on the application of one of the parties to the case, if preferred within ninety days from the passing of the order.

Power of Board to review its orders.

201B. In the case of any application in which the order of the Commissioner, Collector of the District or Assistant Collector is final, as provided in sections 195, 196 and 197, such Commissioner, Collector or Assistant Collector, as the case may be, may, upon the petition of either party, if presented within thirty days from the date of the decision, review his order upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of or could not produce at the time of trial.

Reviewing of applications not open to appeal.

CHAPTER IX.

MISCELLANEOUS.

202. In computing the period of limitation prescribed for any suit under this Act, the day on which the right to sue accrued shall be excluded.

Time to be excluded in computing limitation period.

In computing the period of limitation prescribed for any appeal under this Act, the day on which the judgment or order complained of was pronounced, and the time requisite for obtaining a copy of the decree or order appealed against, shall be excluded.

203. Whenever a Court is closed on the last day of any period provided in this Act for the presentation of any memorandum of appeal, or for the deposit or payment of any money in or into court, the day on which the Court re-opens shall be deemed to be such last day.

Rule as to last day for presentation or deposit, when Court is closed on that day.

204. (*a.*) If in any suit instituted, or on any application made, under this Act, it appears to the presiding officer that any question in issue involving a point of law is more proper for the decision of a civil Court, such officer, if a Collector of a District, or the Collector of the District on the representation of such officer, may cause a case to be stated for the opinion of the District Judge, who shall hear the case in such manner as nearly as may be as is prescribed for the hearing of cases by the High Court by section 619 of the Code of Civil Procedure.

Power to state case involving point of law for opinion of District Judge.

(*b.*) If the District Judge finds that the case is imperfectly stated, he may return it to the Collector of the District for amendment.

Subject to any limits of value or time prescribed by law for cases falling under the Code of Civil Procedure, an appeal shall lie from the judgment of the District Judge to the High Court.

The District Judge shall return the case with the opinion of the civil Court to the Collector of the District, and the revenue Courts shall decide the suit or application in accordance with such opinion.

(*c.*) The costs attending such case shall be dealt with as costs in the suit or on the application in the revenue Court.

205. (*a.*) If in any suit instituted, or on any appeal presented, in a civil or revenue Court, the Judge or presiding officer doubts whether he is precluded by this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.

Power to refer to High Court questions as to jurisdiction.

(*b.*) On any such reference being made, the High Court may order the Judge or presiding officer, either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

(*c.*) The order of the High Court on any such reference shall be final, and shall not be questioned by the same parties in the same suit.

206. In all suits instituted in any civil or revenue Court, in which an appeal lies to the District Judge or High Court, an objection that the suit was instituted in the wrong Court shall not be entertained by the appellate Court, unless such objection was taken in the Court of first instance; but the appellate Court shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where objection that suit was instituted in wrong Court was not taken in Court of first instance.

207. If in any such suit such objection was taken in the Court of first instance, but the appellate Court has before it all the materials necessary for the determination of the suit, it shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where such objection was taken in Court of first instance.

208. If in any such suit the appellate Court has not before it the materials necessary for the determination of the suit, it shall proceed under the provisions of the Code of Civil Procedure relating to appeals; but if it remands the suit, or frames and refers issues for trial, or requires additional evidence to be taken by the Court of first instance, it may direct its order either to the Court in which the suit was instituted, or to any other Court competent to entertain the suit,

Procedure where, in such cases, the appellate Court has not materials for determining the suit.

and the objection that the order of a subordinate appellate Court has been directed to a Court which was not competent to entertain the suit shall not be taken on special appeal.

208A. If, in any suit or application pending before a Revenue Court exercising original, appellate or revisional jurisdiction under this Act, it appears to such Court that any question in issue is more proper for decision by a civil Court, such Revenue Court may, by order in writing, require any party to such suit or application to institute, within such time as it may appoint in this behalf, a suit in the civil Court with a view to obtaining a decision of such question; and, if he fails to comply with such requisition, shall decide such question against him.

Power to refer party to civil Court.

If he institutes such suit, the Revenue Court shall dispose of the suit or application pending before it in accordance with the final decision of the civil Court of first instance or appeal (as the case may be) upon such question.

Suits by co-sharer against lambardár for share of profits.

209. In any suit brought by a co-sharer against a lambardár for a share of the profits, the Court may award to the plaintiff not only a share of the profits actually collected, but also a sum equal to the plaintiff's share in the profits which, through gross negligence or misconduct, the lambardár has omitted to collect.

Tenant's power to implead persons claiming through landholder.

210. In any application made by a tenant against a landholder to recover possession of a holding, the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the landholder.

Landholder's power to implead persons claiming through tenant.

In any suit instituted, or application made, by a landholder to eject a tenant, the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the tenant.

Power of Local Government to make rules.

211. The Local Government may from time to time make rules consistent with this Act—

(*a*) for the guidance of officers in determining, under sections 13, 14, 15, 17, 18 and 20, the rent payable by tenants,

(*b*) for the guidance of officers assessing rent under section 30,

(*c*) as to the dates on which instalments of rent shall fall due,

(*d*) as to the procedure to be followed on all applications under section 95.

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

Power of Board to make rules.

The Board, with the previous sanction of the Local Government, may from time to time make rules, consistent with the provisions herein contained, for the guidance of all persons in matters connected with the enforcement of this Act.

Instalments when to be deemed in arrear.

212. When the Local Government has made a rule fixing the date on which any instalment of rent shall fall due, no such instalment shall, for the purposes of this Act, be deemed to be in arrear unless it remains unpaid after the date fixed by such rule.

THE FIRST SCHEDULE.

FORM A. (*See Section 51.*)

I, *A. B.*, of , solemnly declare that I did personally [*or* by my agent *C. D.*], on the day of , tender payment to *E. F.* of the sum of Rs. as and for the whole amount due from me on account of rent from the month of to the month of both inclusive. I further declare that the said *E. F.* refused to accept the sum so tendered, and to give a receipt in full for the same, 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 I owe the said *E. F.*, and I hereby apply for leave to pay the same accordingly.

FORM B. (*See Section 52.*)

Court of the Collector of
day of , *dated the* *of*

To *E. F.* &c.

WITH reference to the written declaration of *A. B.*, 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 to your duly authorized agent, on application.

[This is to be written on a copy of the declaration in Form A made by the person paying the money into Court.]

FORM C. (*See Section 69.*)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of distrained property. Commissioner for sale of

A. B., Distrainer.

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

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

Dated this day of 188 .

FORM D. (*See Section 114.*)

FORM OF SUMMONS TO DEFENDANT.

No. (*of suit*) dated

In the Court of

A. B., Plaintiff.

[*Name, description and address of plaintiff.*]

C. D., Defendant.

[*Name, description and address of Defendant.*]

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

FORM E. (*See section 119.*)

FORM OF WARRANT OF ARREST.

No. (*of suit*) dated

In the Court of

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

To the Názir of the Court of the Collector of

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

Dated this day of 188 .

FORM F. (*See section 119.*)

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of

A. B., Plaintiff.

[*Name, description and address of plaintiff.*]

C. D., Defendant.

[*Name, description and address of defendant.*]

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

FORM G. (*See section 121.*)

FORM OF SECURITY-BOND FOR APPEARANCE OF DEFENDANT.

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

FORM H. (*See section 156.*)

WRIT OF EXECUTION AGAINST THE PERSON.

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

To the Názir of the Court of the Collector of

WHEREAS the said *C. D.* was directed by a decree of this Court, under date the day of 188 , to pay to *A. B.* the sum of and for costs of suit, amounting to , and whereas the said *C. D.* has omitted to pay the same, you are hereby commanded to apprehend the said *C. D.*, and to bring him with all convenient speed before this Court to be dealt with according to law.

FORM I. (*See section 156.*)

WRIT OF EXECUTION AGAINST THE EFFECTS.

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

To the Názir of the Court of the Collector of

WHEREAS *C. D.* was directed by a decree of this Court, under date the day of 188 , to pay to *A. B.* the sum of and for costs of suit, amounting to , and whereas the said *C. D.* has omitted to pay the same, you are hereby commanded to levy the said sum of , and the sum of for costs of executing this process, by seizure and sale of such moveable property of the said *C. D.* as (is described in the list annexed and) [*if no list is furnished, these words to be omitted*] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said *C. D.*, on some convenient day, not being less than ten nor more than fifteen days from the day of seizure, unless the amount leviable as aforesaid shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

THE SECOND SCHEDULE.

(*See section 1.*)

TERRITORIES EXEMPTED, IN THE FIRST INSTANCE, FROM THE OPERATION OF THE ACT.

I. The province of Kumaon and Garhwál.

II. The Tarai Parganas, comprising—Bázpúr, Káshípúr, Jaspúr, Rudarpúr, Gadarpúr, Kilpúrí, Nának-Mattha, and Bilheri.

III. The portion of the Mirzápúr District lying to the South of the Kaimor Range.

IV. The Family Domains of the Mahárájá of Benares comprising the following parganas:—
Bhadohi and Kera Maugror in the Mirzapur District,
Kaswár Rájá in the Benares District.

V. The tract of country known as Jaunsar Báwar in the Dehra Dún District.

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 11th March, 1881, and is hereby promulgated for general information :—

ACT No. XIII OF 1881.

An Act to provide for the better government of Fort William.

Preamble.

WHEREAS it is expedient to give power to make rules for the better government of Fort William in Bengal and to provide for the establishment of a Court within the said Fort for the trial of persons charged with breaches of such rules; It is hereby enacted as follows :—

Short title. Commencement.

1. This Act may be called "The Fort William Act, 1881;" and it shall come into force on the first day of April, 1881.

But nothing herein contained shall be deemed to confer jurisdiction over any persons (other than artificers, labourers, sutlers and followers) to whom the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, 1869, is or are applicable.

"The Fort."

2. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, define, for the purposes of this Act, the limits of Fort William in Bengal; and in this Act the expression "the Fort" means the area so defined.

Commander-in-Chief may make rules.

3. The Commander-in-Chief in India may, from time to time, with the sanction of the Governor General in Council, make rules, to be in force within the Fort, in regard to the matters specified in the schedule hereto annexed, and other matters of a like nature, and may by such rules prescribe, as penalties for the infringement thereof, fine which may extend to fifty rupees, or imprisonment for a term which may extend to four days, or both.

When a sentence of fine is passed under any such rule, the term for which the Court directs the offender to be imprisoned in default of payment of such fine may extend to, and shall not exceed, four days.

When any rule is made under this section, a copy thereof, in English and such other languages as the Governor General in Council may from time to time direct, shall be exhibited in such conspicuous places within the Fort as the officer commanding the Fort may from time to time direct.

Governor General in Council may invest officer with power to try breaches of rules.

4. The Governor General in Council may invest any commissioned officer in Her Majesty's Army with power to try persons charged with any infringement of the rules made under section three.

The officer so invested is hereinafter called the Fort Magistrate.

Procedure to be followed.

5. In all cases under this Act, the Fort Magistrate shall, except as herein otherwise provided, exercise within the Fort the powers, and, as nearly as may be, follow the procedure, conferred on, and prescribed for, a Presidency Magistrate by the Presidency Magistrates Act, 1877; and, subject to the power conferred by the High Courts Criminal Procedure Act, 1875, section 147, every finding, sentence or order of such Magistrate under this Act shall be final.

Power to arrest without warrant.

6. Any Police-officer, or any other person empowered in this behalf by the Governor General in Council, by name or as a member of a specified class, may arrest without warrant any person who in his sight commits an offence punishable under this Act.

Power to Police-officer to release on bail.

Every person so arrested shall be taken to the police-station within the Fort, and shall be detained there until he gives to the Police-officer in charge of such station a bond, with or without sureties, as such officer may require, for a sum not exceeding one hundred rupees, to appear before the Fort Magistrate at a time to be specified in such bond, or until he can be brought before such Magistrate.

Jurisdiction of Presidency Magistrates and prosecutions under other laws saved.

7. Nothing in this Act or in any rule made hereunder shall affect the jurisdiction of the Magistrates appointed under the Presidency Magistrates Act, 1877, or shall prevent any person from being prosecuted under any other law for any offence punishable under this Act, or from being liable to any other punishment than is provided for such offence by this Act: Provided that no person shall be punished twice for the same offence.

Limitation of time for prosecutions under Act.

8. No prosecution for any offence under this Act shall be commenced after the expiration of three months next after such offence has been committed.

9. All penalties heretofore imposed by the Garrison Quarter Master of the Fort for offences against garrison rules and regulations shall be deemed to have been imposed in accordance with law.

Validation of penalties heretofore imposed by Garrison Quarter Master.

THE SCHEDULE.

(*See section 3.*)

(1). Throwing dirt or rubbish of any description into the drains or roads or anywhere but in the appointed places.

(2). Removing night-soil without a covering or at unauthorized hours.

(3). Camp-followers, servants and others not keeping the godowns they live in clean.

(4). Performing offices of nature in other than the appointed places.

(5). Bathing, or washing clothes or animals, in the *cunette* or other unauthorized places.

(6). Selling unwholesome articles of food, grain or drinks.

(7). Adulterating food or drinks.

(8). Making evacuations in unauthorized places.

(9). Rash or negligent driving.

(10). Picketting, training or breaking in animals.

(11). Causing obstruction by vehicles on the road.

(12). Exposing or hawking articles for sale about the roads and barracks, or within the Fort, without a Fort pass.

(13). Beating drums or tom-toms.

(14). Damaging lamps, posts, masonry or other Government-property in any part of the Fort.

(15). Disorderly behaviour in the public thoroughfares.

(16). Gambling.

(17). Spitting pán on any of the public staircases, gateways, walls and verandahs, or defacing in any way the walls of barracks, buildings or gateways.

(18). Throwing slops into the drains.

(19). Washing cooking-pots at the water-taps and wasting water.

(20). Cooking in unauthorized places.

(21). Hanging clothes to dry on the guns or masonry-work.

(22). Laying out clothes, accoutrements or stable-bedding after the authorized hours.

(23). Destroying the trees, bushes or plants, or climbing trees.

(24). Servants smoking hookahs in their masters' quarters or cook-houses, or keeping such quarters or cook-houses in an insanitary state.

(25). Trespassing on parade-grounds, or making footpaths across the grass-plots.

(26). Being drunk and incapable.

(27). Fighting, quarrelling and creating a disturbance, or making unnecessary noise of any kind.

(28). Affixing bills and papers on any walls in the Fort.

(29). Cutting grass or interfering with the grass-contractor.

(30). Declining to show a tin pass when called upon to do so.

(31). Being found in the garrison without a tin pass, or being in possession of a ticket belonging to another.

(32). Driving vehicles without lights or with insufficiently greased wheels.

(33). Swinging or sitting on the chain-fences.

(34). Interfering in any way with the guns, carriages or piles of shot and shell on the works, or with the packed ordnance.

(35). Mounting the ramparts or parapets or entering the embrasures without authority.

(36). Smuggling liquor into the Fort.

(37). Burning stable-litter or lighting fires except in authorized places and at authorized hours.

(38). Carrying lights except in closed lanterns, or letting off fireworks.

(39). Removing property of any kind or description from the Fort without written authority.

(40). Allowing animals of any sort to stray into the Fort, or to graze within the same.

(41). Slaughtering animals or exposing carcasses or offal within the Fort.

(42). Keeping dogs or poultry in unauthorized places.

(43). Buying, selling or receiving any portion of a soldier's kit.

(44). Disobedience of lawful authority in failing to attend to authorized instructions of the police or of the several sentries posted throughout the Fort.

(45). Occupying buildings of any kind without proper allotment.

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 11th March, 1881, and is hereby promulgated for general information:—

ACT No. XIV OF 1881.

An Act to amend Bengal Regulation VII of 1828.

WHEREAS it is expedient to amend Bengal Regulation VII of 1828 (*for amending the Provisions of Regulation XV of 1795, and for defining the Authority of the Rajah of Benares in the Mahâls therein referred to*) in manner hereinafter appearing; It is hereby enacted as follows:—

Preamble.

1. This Act may be called "The Benares Family Domains Act, 1881": And it shall come into force on such day as the Lieutenant-Governor of the North-Western Provinces may, by notification in the official Gazette, appoint in this behalf.

Short title.

Commencement of Act.

2. The following portions of Bengal Regulation VII of 1828 shall be repealed, namely:—

Repeal of certain portions of Bengal Regulation VII of 1828.

(*a*) in section 5, the words and figures "under the rules contained in Regulation XLI, 1795";

(*b*) in section 14, the words "under the Regulations," in both places in which they occur;

(*c*) in section 19, the words "before the Court of circuit";

(*d*) in section 20, the proviso.

3. In the same Regulation, for section 3, the following shall be substituted, namely:—

New section substituted for section 3 of same Regulation.

"3. The superintendence of the said mahâls shall be vested in the Commissioner of the Benares Division, hereinafter called 'the Superintendent.'

Superintendence of mahâls vested in Commissioner.

"The Lieutenant-Governor of the North-Western Provinces may, from time to time, appoint a Deputy Superintendent of the said mahâls, and confer upon him all or any of the powers of the Superintendent, to be exercised by him subject to the general control of the Superintendent."

4. In the same Regulation, section 7, for the last twenty-two words, the following shall be substituted, namely:—

Amendment of same Regulation, section 7.

"The orders thus passed by the Superintendent shall be subject to appeal to, and revision by, the Board of Revenue, whose order thereon shall be final, unless altered or set aside by the said Lieutenant-Governor."

5. In the same Regulation, section 9, for the words "the Regulations at present in force within the Province of Benares" the words "the enactments for the time being in force in the North-Western Provinces" shall be substituted, and after the word "applicable" the words "and the Local Government with the concurrence of the Mahárájá may direct" shall be inserted.

Amendment of same Regulation, section 9.

6. To section 10 of the same Regulation the following clause shall be added, namely:—

Clause added to section 10 of same Regulation.

"The Mahárájá may delegate to one or more of his officers the exercise of all or any of the powers vested in him under this section in the whole or any part of the said mahâls."

7. In the same Regulation, section 11, for the words and figures "Regulation XI, 1822," the words "the enactments for the time being in force in the North-Western Provinces" shall be substituted.

Amendment of same Regulation, section 11.

8. In the same Regulation, section 12, for the words "Boards of Revenue" the words "Commissioners of Divisions and the Board of Revenue" shall be substituted;

and, for the words "towards the Board" the words "towards the Commissioner" shall be substituted.

Amendment of same Regulation, section 12.

9. In the same Regulation, section 13, for the words "Governor General in Council" the words "Board of Revenue" shall be substituted.

Amendment of same Regulation, section 13.

10. In the same Regulation, section 16, for the words "a Native Commissioner shall be maintained by the Rajah in each of the pergunnahs referred to in Regulation XV, 1795," the following shall be substituted, namely:—"A Native Commissioner, or two or three Native Commissioners, as the said Lieutenant-Governor may, from time to time, direct, shall be maintained by the Mahárájá."

Amendment of, and addition to, same Regulation, section 16.

And to the same section the following shall be added, namely :—

"The local limits of the jurisdiction of the Native Commissioners shall be determined by the Mahárájá, and may be altered by him from time to time."

11. In the same Regulation, section 21, for the words and figures "contained in Regulation XXIII of 1814" to the end of the section, the following shall be substituted, namely :—"prescribed by the said Lieutenant-Governor under section 22 of this Regulation."

Amendment of same Regulation, section 21.

12. For sections 22 to 26, both inclusive, of the same Regulation, the following sections shall be substituted, that is to say :—

Sections substituted for sections 22 to 26 of same Regulation.

"22. The said Lieutenant-Governor may, from time to time, make rules consistent with this Regulation—

Power to make rules.

"(*a*) to regulate the procedure and powers of the Native Commissioners, and to determine the cases in which, the mode in which, and the authority to or by which, the orders and decisions of such Commissioners shall be subject to appeal or revision, and

"(*b*) to regulate, in matters not hereinbefore provided for, the administration of the Family Domains in so far as it is entrusted to the Mahárájá;

"such rules shall, when published in the local Gazette, have the force of law:

"Provided that no such rule shall be so published until the opinion of the Mahárájá thereon has been taken and considered by the Lieutenant-Governor.

"In matters not otherwise provided for by the rules made under clause (*a*), the Code of Civil Procedure shall apply.

"23. If, in any suit instituted or appeal presented under this Regulation in any Court, the Judge or presiding officer doubts whether he has jurisdiction, he may refer the matter to the Board of Revenue; and, on any such reference being made, the said Board may order the Judge or presiding officer either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

Procedure in case of doubt as to Judge's jurisdiction.

"The order of the said Board on any such reference shall be final.

"24. Except as provided by or under this Regulation, or any other enactment for the time being in force,

Operation of general Acts.

"(*a*) the administration of the Family Domains, in so far as it is entrusted to the Mahárájá, shall be regulated by the principles and spirit of the enactments for the time being in force in the North-Western Provinces, and

"(*b*) the administration of the said Domains, in so far as it has not been so entrusted, shall be regulated by those enactments.

"25. In this Regulation, unless there is something repugnant in the subject or context,—

Interpretation-clause.

"'Board of Revenue' means the Board of Revenue of the North-Western Provinces, or such officer or officers as may hereafter be lawfully appointed to exercise, within the Province of Benares, the powers of such Board.

'Board of Revenue.'

"'Regulations' includes Acts for the time being in force in the North-Western Provinces."

'Regulations.'

13. All orders heretofore passed by the Governor General in Council, or the Lieutenant-Governor of the North-Western Provinces, or any other authority, regarding revisions of settlement or other matters connected with the revenue-administration of the tracts of territory mentioned in the preamble to Bengal Regulation VII of 1828, shall be deemed to have been passed in accordance with law; and no order or decision purporting to have been passed by any civil or revenue authority under the provisions of that Regulation shall be called in question in any Court.

Validation of past orders, &c.

14. In the Scheduled Districts Act, 1874, first schedule, Part IV, and in the Laws Local Extent Act, 1874, sixth schedule, Part IV, the following shall be repealed, that is to say :—

Parts of Acts XIV and XV of 1874 repealed.

"V. The Family Domains of the Mahárájá of Benares comprising the following parganas :—

"Bhadohi and Kheyra Mángror in the Mirzapur District.

"Kaswá Rájá in the Benares District."

15. In the Laws Local Extent Act, 1874, section 8, after clause (*j*), the following shall be inserted, namely :—

Clause added to Act XV of 1874, s. 8.

"(*jj*) extend to Pargana Bhadohi or Pargana Kera Mangror in the Mirzapur District, or to Pargana Kaswár Rájá in the Benares District, any law not now in force therein."

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th March, 1881, and is hereby promulgated for general information :—

ACT No. XV OF 1881.

THE FACTORIES ACT, 1881.

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An Act to regulate labour in Factories.

WHEREAS it is expedient to regulate labour in factories; It is hereby enacted as follows :—

Preamble.

Preliminary.

1. This Act may be called "The Indian Factories Act, 1881."

Short title.

It applies to the whole of British India, and shall come into force on the first day of July, 1881.

Local extent. Commencement.

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

Interpretation-clause.

"factory" means any premises (other than indigo-factories or premises situated on, and used solely for the purposes of, a tea or coffee plantation) wherein is carried on, for not less than four months in the whole in any one year, any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale, any article or part of an article; and

"factory."

(*a*) wherein steam, water or other mechanical power is used in aid of any such process; and

(*b*) wherein not less than one hundred persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process; and

every part of a factory shall be deemed to be a factory, except any part used exclusively as a dwelling :

"child" means a person under the age of twelve years :

"child."

"mill-gearing" includes every shaft, whether upright, oblique or horizontal, and every wheel, drum, pulley, rope, driving strap or band, by which the motion of the first moving power is communicated to any machine :

"mill-gearing."

a child who works in a factory, whether for wages or not, either in a manufacturing process or handicraft, or in cleaning any part of the factory used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall be deemed to be employed therein within the meaning of this Act.

"employed."

Inspectors and certifying Surgeons.

Inspectors.

3. The Local Government may in its discretion, by notification in the official Gazette, appoint such persons as it thinks fit to be Inspectors of factories within such local limits as it may assign to such Inspectors, and may suspend or dismiss any person so appointed.

In default of such appointment, the Magistrate of the district shall, in virtue of his office, be Inspector of all factories (if any) in the District.

Such Inspectors shall be deemed public servants within the meaning of the Indian Penal Code; and shall be officially subordinate to such authority as the Local Government may, from time to time, indicate in this behalf.

Powers of Inspector.

4. An Inspector of factories may, within the local limits for which he is appointed,

(*a*) enter, with such assistants (if any) as he thinks fit, any factory whenever he has reason to believe that any person is employed therein;

(*b*) make such examination of the premises and machinery, and of the registers hereinafter prescribed, and take on the spot or otherwise such evidence of any person as such Inspector may deem necessary for carrying out the provisions of this Act;

(*c*) order that any person shall not be employed in a factory when he has reason to believe that such employment would be in contravention of this Act—

until the age of such person has been certified, in the manner hereinafter provided, to be above seven years; or,

for more than the time allowed by this Act for the employment of children, until his age has been so certified to be above twelve years.

Certifying surgeons.

5. The Civil Surgeon or such other person practising medicine or surgery as the Local Government may, from time to time, appoint in this behalf for any local area (hereinafter called the certifying surgeon) shall, at the request of any person employed or desirous of being employed in a factory situate in such local area, or of the parent or guardian of such person, examine such person and grant him a certificate, stating whether his age, as nearly as it can be ascertained from such examination, is above or below seven years, or twelve years, as the case may be.

Children.

Age of employment.

6. No child shall be employed in any factory, if he is under the age of seven years.

Hours of employment for children.

7. No child shall be actually employed in any factory more than nine hours in any one day.

And no child shall be employed in any factory on any day without an interval, or intervals, amounting in the whole to at least an hour, being allowed to him for food and rest.

The times at which such intervals shall be allowed, and the length of each interval, shall be fixed by the Local Government for each factory, after ascertaining, as far as possible, the existing practice in such factory and the wishes of the occupier thereof.

The occupier shall set up and maintain, in some conspicuous place in the factory, a printed or written notice, in English and the languages of the District in which the factory is situate, showing the times at which such intervals shall be allowed and the length of each interval.

A child shall not be deemed to be employed within the meaning of the first clause of this section during any interval allowed for food or rest.

Child to be allowed holidays.

8. Every occupier of a factory in which children are employed shall, before the beginning of each month, fix not less than four days in such month on which no child shall be employed in such factory, and shall forthwith give notice of the days so fixed to such officer as the Local Government may, from time to time, appoint in this behalf.

An occupier of a factory may, with the previous sanction of the Inspector, substitute, for any day fixed under this section, another day in the same month.

No child shall be employed in such factory on a day fixed under this section, unless when another day has been substituted for such day as hereinbefore provided, in which event no child shall be employed in such factory on the day so substituted.

Not to be employed in two factories on same day.

9. No occupier of a factory shall employ therein on any day any child who has to his knowledge already been employed on the same day in any other factory.

Not to be engaged in certain dangerous work.

10. No occupier of a factory shall allow any child to clean any part of the mill-gearing or machinery of such factory while the same is in motion, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of the steam-engine, water-wheel or other mechanical power, as the case may be.

Register of children in a factory.

11. The Local Government may direct any occupier of a factory to keep, in such form and with such particulars as such Government may, from time to time, prescribe, registers of the children (if any) employed in such factory, and of their respective employments.

Fencing.

Fencing.

12 (*a*). Every fly-wheel directly connected with a steam-engine, or water-wheel or other mechanical power in any part of a factory, and every part of a steam-engine or water-wheel,

(*b*) every hoist or teagle near which any person is liable to pass or be employed, and

(*c*) every other part of the machinery or mill-gearing of a factory which may, in the opinion of the local Inspector, be dangerous if left unfenced, and which he may have ordered to be fenced,

shall, while the same is in motion, be kept by the occupier of such factory securely fenced.

Any order under clause (*c*) may be set aside, on appeal or otherwise, by the Local Government or such authority as it may appoint in this behalf.

Notices.

Notice to be given of accidents.

13. When any accident occurs in a factory causing death or bodily injury whereby the person injured is prevented from returning to his work in the factory during forty-eight hours after the occurrence of the accident, the occupier of such factory, or, in his absence, his principal agent in the management of such factory, shall send such notice of such accident to such authorities in such form and within such time as the Local Government may, from time to time, by rule, direct.

Person beginning to occupy factory to give notice.

14. Every person shall, within one month after he begins to occupy a factory, send to the local Inspector a written notice containing the name of the factory, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work performed in such factory, the nature and amount of the moving power therein, and the name of the person (if any) under whom the business of the factory is to be carried on.

Penalties.

Penalties.

15. Any person who, in breach of this Act, or of any order or rule made hereunder—

(*a*) employs any child in any factory;

(*b*) neglects to set up or maintain the notice required by section seven or to fix the days referred to in section eight;

(*c*) allows any child to perform the work forbidden by, or to work in contravention of, section ten;

(*d*) neglects to keep a register in manner prescribed under section eleven;

(*e*) neglects to fence any machinery or mill-gearing in any factory; or

(*f*) neglects to give any notice,

shall be punished with fine which may extend to two hundred rupees:

Provided that—

1st, no prosecution under this section shall be instituted except by, or with the previous sanction of, the local Inspector; and

Only one penalty for same kind of offence on one day.

2nd, no person shall be liable under this section to more than one penalty for any one description of offence committed on the same day, except where two or more children are employed contrary to the provisions of this Act, in which case one penalty may be imposed in respect of each child so employed.

Burden of proof as to age.

16. Where an act or omission would, if a person were under seven or twelve years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age.

Certifying Surgeon's declaration in writing.

A declaration in writing by a certifying Surgeon that he has personally examined a person employed in a factory, and believes him to be under or over the age set forth in such declaration, shall, for the purposes of this Act, be admissible as evidence of the age of that person.

Occupier primarily liable for breaches of Act.

17. Every occupier of a factory shall be deemed primarily liable for any breach therein of the provisions of this Act; but he may discharge himself from such liability by proof to the satisfaction of the local Inspector, before prosecution therefor, that such breach was committed by some other person without his knowledge or consent; and the person committing such breach shall be liable therefor.

Miscellaneous.

Power to make rules.

18. The Local Government may, from time to time, make rules consistent with this Act to provide for—

(*a*) the fencing of machinery and mill-gearing in factories;

(*b*) the inspection of factories;

(*c*) the manner in which appeals under this Act shall be presented and heard; and

(*d*) otherwise carrying out the provisions of this Act.

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

Crown factories.

19. This Act shall apply to factories belonging to the Crown; provided that, in case of any public emergency, the Governor General in Council or the Local Government may, by an order in writing, exempt any such factory from this Act to such extent and during such period as the Governor General in Council or the Local Government, as the case may be, thinks fit.

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th March, 1881, and is hereby promulgated for general information :—

ACT No. XVI OF 1881.

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

Preamble.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions; It is hereby enacted as follows :—

Short title. Commencement.

1. This Act may be called "The Obstructions in Fairways Act, 1881;" and it shall come into force at once.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty or by the Secretary of State for India in Council.

Local Government empowered to remove or destroy obstruction in fairway.

2. Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded or abandoned, or any fishing-stake, timber or other thing is placed or left, the Local Government of the part of British India in which such port is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,

(*a*) cause such thing or any part thereof to be removed ; or,

(*b*) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, cause the same or any part thereof to be destroyed.

Government entitled to expenses incurred in removing obstruction.

3. Whenever anything is removed under section two, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Dispute concerning such expenses.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the Magistrate of the District or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

Notice of removal to be given by Local Government.

4. The Local Government shall, whenever anything is removed under section two, publish in the local official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

Things removed may, in certain cases, be sold.

5. If after publishing such notification, such thing is unclaimed, or

if the person claiming the same fails to pay the amount due for the said expenses and any customs duties or other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

Proceeds how applied.

6. On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same :

Provided that he makes the claim within one year from the date of the sale.

"Vessel" to include tackle, cargo, &c.

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel, and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

Power to make rules to regulate and prohibit the placing of obstructions in fairways.

8. The Governor General in Council may from time to time, by notification in the *Gazette of India*, make rules to regulate or prohibit in any fairway leading to a port in British India, the placing of fishing-stakes, the casting or

throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause, or be likely to cause, obstruction or danger to navigation.

Penalty for breach of such rules.

9. Whoever is guilty of any act or omission in contravention of the rules made under section eight, may be tried for such offence in any district or Presidency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Compensation payable in certain cases for damage caused under this Act.

10. Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section two, or its creation is regulated or prohibited under section eight, any person having a right to maintain or create such obstruction shall be entitled to receive from the Secretary of State for India in Council reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the Presidency-town or district in which the port to which such fairway leads is situate.

Certain action of the Government previous to passing of this Act to be deemed to have been taken hereunder.

11. Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Governor General in Council or a Local Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

Saving of other powers possessed by Government.

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 2, 1881.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th March, 1881, and is hereby promulgated for general information:—

ACT NO. XV OF 1881.

THE FACTORIES ACT, 1881.

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An Act to regulate labour in Factories.

WHEREAS it is expedient to regulate labour in factories; It is hereby enacted as follows:—

Preamble.

Preliminary.

Short title.

1. This Act may be called "The Indian Factories Act, 1881."

Local extent. Commencement.

It applies to the whole of British India, and shall come into force on the first day of July, 1881.

Interpretation-clause.

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

"factory": "factory" means any premises (other than indigo-factories or premises situated on, and used solely for the purposes of, a tea or coffee plantation) wherein is carried on, for not less than four months in the whole in any one year, any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale, any article or part of an article; and

(*a*) wherein steam, water or other mechanical power is used in aid of any such process; and

(*b*) wherein not less than one hundred persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process; and

every part of a factory shall be deemed to be a factory, except any part used exclusively as a dwelling:

"child": "child" means a person under the age of twelve years:

"mill-gearing": "mill-gearing" includes every shaft, whether upright, oblique or horizontal, and every wheel, drum, pulley, rope, driving strap or band, by which the motion of the first moving power is communicated to any machine:

"employed": a child who works in a factory, whether for wages or not, either in a manufacturing process or handicraft, or in cleaning any part of the factory used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall be deemed to be employed therein within the meaning of this Act.

Inspectors and certifying Surgeons.

Inspectors.

3. The Local Government may in its discretion, by notification in the official Gazette, appoint such persons as it thinks fit to be Inspectors of factories within such local limits as it may assign to such Inspectors, and may suspend or dismiss any person so appointed.

In default of such appointment, the Magistrate of the district shall, in virtue of his office, be Inspector of all factories (if any) in the District.

Such Inspectors shall be deemed public servants within the meaning of the Indian Penal Code; and shall be officially subordinate to such authority as the Local Government may, from time to time, indicate in this behalf.

Powers of Inspector.

4. An Inspector of factories may, within the local limits for which he is appointed,

(*a*) enter, with such assistants (if any) as he thinks fit, any factory whenever he has reason to believe that any person is employed therein;

(*b*) make such examination of the premises and machinery, and of the registers hereinafter prescribed, and take on the spot or otherwise such evidence of any person as such Inspector may deem necessary for carrying out the provisions of this Act;

(*c*) order that any person shall not be employed in a factory when he has reason to believe that such employment would be in contravention of this Act—

until the age of such person has been certified, in the manner hereinafter provided, to be above seven years; or,

for more than the time allowed by this Act for the employment of children, until his age has been so certified to be above twelve years.

Certifying surgeons.

5. The Civil Surgeon or such other person practising medicine or surgery as the Local Government may, from time to time, appoint in this behalf for any local area (hereinafter called the certifying surgeon) shall, at the request of any person employed or desirous of being employed in a factory situate in such local area, or of the parent or guardian of such person, examine such person and grant him a certificate, stating whether his age, as nearly as it can be ascertained from such examination, is above or below seven years, or twelve years, as the case may be.

Children.

Age of employment.

6. No child shall be employed in any factory, if he is under the age of seven years.

Hours of employment for children.

7. No child shall be actually employed in any factory more than nine hours in any one day.

And no child shall be employed in any factory on any day without an interval, or intervals, amounting in the whole to at least an hour, being allowed to him for food and rest.

The times at which such intervals shall be allowed, and the length of each interval, shall be fixed by the Local Government for each factory after ascertaining, as far as possible, the existing practice in such factory and the wishes of the occupier thereof.

The occupier shall set up and maintain in some conspicuous place in the factory, a printed or written notice, in English and the languages of the District in which the factory is situate, showing the times at which such intervals shall be allowed and the length of each interval.

A child shall not be deemed to be employed within the meaning of the first clause of this section during any interval allowed for food or rest.

Child to be allowed holidays.

8. Every occupier of a factory in which children are employed shall, before the beginning of each month, fix not less than four days in such month on which no child shall be employed in such factory, and shall forthwith give notice of the days so fixed to such officer as the Local Government may, from time to time, appoint in this behalf.

An occupier of a factory may, with the previous sanction of the Inspector, substitute, for any day fixed under this section, another day in the same month.

No child shall be employed in such factory on a day fixed under this section, unless when another day has been substituted for such day as hereinbefore provided, in which event no child shall be employed in such factory on the day so substituted.

Not to be employed in two factories on same day.

9. No occupier of a factory shall employ therein on any day any child who has to his knowledge already been employed on the same day in any other factory.

Not to be engaged in certain dangerous work.

10. No occupier of a factory shall allow any child to clean any part of the mill-gearing or machinery of such factory while the same is in motion, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of the steam-engine, water-wheel or other mechanical power, as the case may be.

Register of children in a factory.

11. The Local Government may direct any occupier of a factory to keep, in such form and with such particulars as such Government may, from time to time, prescribe, registers of the children (if any) employed in such factory, and of their respective employments.

Fencing.

Fencing.

12 (*a*). Every fly-wheel directly connected with a steam-engine, or water-wheel or other mechanical power in any part of a factory, and every part of a steam-engine or water-wheel,

(*b*) every hoist or teagle near which any person is liable to pass or be employed, and

(*c*) every other part of the machinery or mill-gearing of a factory which may, in the opinion of the local Inspector, be dangerous if left unfenced, and which he may have ordered to be fenced,

shall, while the same is in motion, be kept by the occupier of such factory securely fenced.

Any order under clause (*c*) may be set aside, on appeal or otherwise, by the Local Government or such authority as it may appoint in this behalf.

Notices.

Notice to be given of accident.

13. When any accident occurs in a factory causing death or bodily injury whereby the person injured is prevented from returning to his work in the factory during forty-eight hours after the occurrence of the accident, the occupier of such factory, or, in his absence, his principal agent in the management of such factory, shall send such notice of such accident to such authorities in such form and within such time as the Local Government may, from time to time, by rule, direct.

Person beginning to occupy factory to give notice.

14. Every person shall, within one month after he begins to occupy a factory, send to the local Inspector a written notice containing the name of the factory, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work performed in such factory, the nature and amount of the moving power therein, and the name of the person (if any) under whom the business of the factory is to be carried on.

Penalties.

Penalties.

15. Any person who, in breach of this Act, or of any order or rule made hereunder—

(*a*) employs any child in any factory;

(*b*) neglects to set up or maintain the notice required by section seven or to fix the days referred to in section eight;

(*c*) allows any child to perform the work forbidden by, or to work in contravention of, section ten;

(*d*) neglects to keep a register in manner prescribed under section eleven;

(*e*) neglects to fence any machinery or mill-gearing in any factory; or

(*f*) neglects to give any notice,

shall be punished with fine which may extend to two hundred rupees:

Provided that—

1st, no prosecution under this section shall be instituted except by, or with the previous sanction of, the local Inspector; and

Only one penalty for same kind of offence on one day.

2nd, no person shall be liable under this section to more than one penalty for any one description of offence committed on the same day, except where two or more children are employed contrary to the provisions of this Act, in which case one penalty may be imposed in respect of each child so employed.

Burden of proof as to age.

16. Where an act or omission would, if a person were under seven or twelve years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age.

Certifying Surgeon's declaration in writing.

A declaration in writing by a certifying Surgeon that he has personally examined a person employed in a factory, and believes him to be under or over the age set forth in such declaration, shall, for the purposes of this Act, be admissible as evidence of the age of that person.

Occupier primarily liable for breaches of Act.

17. Every occupier of a factory shall be deemed primarily liable for any breach therein of the provisions of this Act; but he may discharge himself from such liability by proof to the satisfaction of the local Inspector, before prosecution therefor, that such breach was committed by some other person without his knowledge or consent; and the person committing such breach shall be liable therefor.

Miscellaneous.

Power to make rules.

18. The Local Government may, from time to time, make rules consistent with this Act to provide for—

(*a*) the fencing of machinery and mill-gearing in factories;

(*b*) the inspection of factories;

(*c*) the manner in which appeals under this Act shall be presented and heard; and

(*d*) otherwise carrying out the provisions of this Act.

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

Crown factories.

19. This Act shall apply to factories belonging to the Crown; provided that, in case of any public emergency, the Governor General in Council or the Local Government may, by an order in writing, exempt any such factory from this Act to such extent and during such period as the Governor General in Council or the Local Government, as the case may be, thinks fit.

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th March, 1881, and is hereby promulgated for general information:—

ACT No. XVI OF 1881.

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

Preamble.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Obstructions in Fairways Act, 1881;" and it shall come into force at once.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty or by the Secretary of State for India in Council.

Local Government empowered to remove or destroy obstruction in fairway.

2. Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded or abandoned, or any fishing-stake, timber or other thing is placed or left, the Local Government of the part of British India in which such port is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,

(*a*) cause such thing or any part thereof to be removed; or,

(*b*) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, cause the same or any part thereof to be destroyed.

Government entitled to expenses incurred in removing obstruction.

3. Whenever anything is removed under section two, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Dispute concerning such expenses.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the Magistrate of the District or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

Notice of removal to be given by Local Government.

4. The Local Government shall, whenever anything is removed under section two, publish in the local official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

Things removed may, in certain cases, be sold.

5. If after publishing such notification, such thing is unclaimed, or

if the person claiming the same fails to pay the amount due for the said expenses and any customs duties or other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

Proceeds how applied.

6. On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Provided that he makes the claim within one year from the date of the sale.

"Vessel" to include tackle, cargo, &c.

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel, and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

Power to make rules to regulate and prohibit the placing of obstructions in fairways.

8. The Governor General in Council may from time to time, by notification in the *Gazette of India*, make rules to regulate or prohibit in any fairway leading to a port in British India, the placing of fishing-stakes, the casting or

throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause, or be likely to cause, obstruction or danger to navigation.

Penalty for breach of such rules.

9. Whoever is guilty of any act or omission in contravention of the rules made under section eight, may be tried for such offence in any district or Presidency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Compensation payable in certain cases for damage caused under this Act.

10. Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section two, or its creation is regulated or prohibited under section eight, any person having a right to maintain or create such obstruction shall be entitled to receive from the Secretary of State for India in Council reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the Presidency-town or district in which the port to which such fairway leads is situate.

Certain action of the Government previous to passing of this Act to be deemed to have been taken hereunder.

11. Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Governor General in Council or a Local Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

Saving of other powers possessed by Government.

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

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SIMLA, SATURDAY MAY 28, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th May, 1881, and is hereby promulgated for general information:—

ACT No. XVII OF 1881.

An Act to give effect to the Convention between the Governors General of British India and Portuguese India regarding their respective systems of moneys, weights and measures.

Preamble.

WHEREAS by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it was provided that the High Contracting Parties should use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions:

And whereas by the same article it was further provided that the detailed measures to be adopted should form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed within two years from the date when the said Treaty came into force:

And whereas the said Treaty came into force on the fifteenth day of January, 1880:

And whereas, in pursuance of the said recited article, the Convention set forth in the schedule hereto annexed has been made:

It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Portuguese Convention Act, 1881."

Local extent.

It extends to the whole of British India.

Commencement and continuance.

It shall come into force at once, and shall remain in force until the expiration of one year from the date of any notice which may be given under the fourteenth clause of the said Convention.

Provisions of Convention enacted.

2. The provisions of the said Convention, so far as they are binding upon the Government of British India, shall be deemed to have the force of law.

Act XXIII of 1870 to apply to coin and bullion made and brought for coinage to mint under Convention.

3. The provisions of the Indian Coinage Act, 1870, or any other law for the time being in force relating to coinage and the mint, shall, so far as they are consistent with the said Convention, apply to all coin made, and bullion brought for coinage to the mint, under the said Convention, as if such coin and bullion were respectively made and brought for coinage to the mint under the said Act.

THE SCHEDULE.

Whereas, by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it is provided that the High Contracting Parties shall use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions; and whereas by the same article it is further provided that the detailed measures to be adopted shall form the subject of a separate Convention between the Governors General of British India and

Portuguese India, to be executed within two years from the date when the said Treaty comes into force; and whereas the said Treaty came into force on the fifteenth day of January, 1880:

In pursuance of the said article, the following Convention has been made:—

1. The Governor General of Portuguese India shall adopt, in the Portuguese possessions in India, the monetary system of British India, for the time being in force, provided that the coins shall have on one side the effigy of the King of Portugal, with the legend *Ludovicus I, Portugaliæ et Algarbiorum Rex*, around it, or such other effigy and legend as the said Governor General may from time to time desire, and on the other side the value of each coin, the year of the Christian era, and the words *India Portugueza*.

2. Subject to the provisions of clause 7, so long as this Convention remains in force, the following coins and no others shall be struck for Portuguese India:—

Silver.—Rupee, weighing 180 grains troy;

Half-rupee, weighing 90 grains troy;

Quarter-rupee, weighing 45 grains troy;

Eighth of a rupee, weighing 22½ grains troy.

The standard fineness of the said silver coins shall be eleven-twelfths of fine silver and one-twelfth of alloy, subject to a remedy not exceeding the following:—

	Remedy in weight.	Remedy in fineness.
Rupee ...	Five thousandths.	Two thousandths.
Half-rupee ...		
Quarter-rupee...	Seven thousandths.	Three thousandths.
Eighth of a rupee	Ten thousandths.	

Copper.—Half *tanga*, weighing 200 grains troy, and corresponding with the double pice or half-anna of British India;

Quarter *tanga*, weighing 100 grains troy, and corresponding with the pice of British India;

Eighth of a *tanga*, weighing 50 grains troy, and corresponding with the half-pice of British India;

Real, or twelfth of a *tanga*, corresponding with the pie of British India;

In the making of copper coins, a remedy shall be allowed not exceeding one-fortieth in weight.

The value in copper of one Portuguese rupee will be sixteen Portuguese *tangas*, sixty-four quarter *tangas* or pices, or one hundred and ninety-two *reaes* or pies.

3. The Portuguese silver and copper coins established by this Convention shall be issued by the authority of the Government of Portuguese India, and shall be coined on behalf of the said Government by the Government of British India, and by no other agency whatever.

The Governor General of Portuguese India engages that, while this Convention continues in force, no coins other than those established by this Convention shall be coined in or imported into Portuguese India.

4. With the view of obtaining in the shortest possible time the desired uniformity of coinage throughout the respective Indian possessions of the High Contracting Parties, the Governor General of British India engages that the Government of British India shall—

(*a*) forego, for the period of three years from the date on which this Convention comes into force, all duty or other charge for melting, cutting, refining or recoining any coin of the existing Portuguese Indian silver currency tendered for recoinage into Portuguese Indian coin;

(*b*) deliver, for the period of five years from the date of this Convention, copper coins of the Portuguese copper currency established by this Convention in exchange for copper coins of the existing Portuguese Indian copper currency which may be brought to the said Mint for the purpose of such exchange, at the value represented by such last-mentioned coins in the existing Portuguese currency. The relative representative value of the old and new coin to be thus exchanged on equal terms, and without charge for manufacture, shall, if the Governor General of Portuguese India so desires, be determined, once for all, by a mixed commission appointed in the manner provided in the sixteenth article of the above-cited Treaty;

(*c*) advance to the Governor General of Portuguese India, in the Portuguese currency established by this Convention, such sums in such denominations of coin, and in such instalments (if any), as the said Governor General of Portuguese India may require: provided—

1*stly*.—That the amount of such advances outstanding at any time shall not exceed in the whole ten lákhs of rupees.

2*ndly*.—That an interval of two months shall be allowed for compliance with any such requisition, and that no such advance shall be made after the expiration of eighteen months from the date on which this Convention comes into force.

3*rdly*.—That every such advance shall be, within two months, repaid in coin of the existing Portuguese Indian currency, equivalent thereto in intrinsic value ascertained upon assay at Her Majesty's Mint, or in copper coin of the existing Portuguese Indian currency valued as prescribed in clause (*b*).

5. The Governor General of British India engages that the Government of British India shall,—

(*a*) on presentation by or on behalf of the Governor General of Portuguese India of any silver bullion or coin at the Mint at Bombay, or at such other Mint as the said Government from time to time appoints, deliver to the said Governor General or his agent, after such interval as in the judgment of the Mint Master is necessary for the process of coinage, the produce of such silver bullion or coin, in the silver coin established by this Convention, subject, always, to the same duty, charges, fees and regulations as are for the time being in force for the conversion into British Indian currency of bullion and coin, presented at the said Mint: provided that, save as provided in clause 4, the said Government shall not be bound thus to deliver more than four lákhs of rupees in any one year;

(*b*) coin for the Governor General of Portuguese India the copper coins established by this Convention, to such amounts and in such denominations as the said Governor General may require, upon payment of the value inscribed upon such coins in the silver coin established by this Convention or in British Indian rupees: provided that, saving as engaged in clause 4, the said Government shall not be bound thus to coin more than twenty thousand rupees' worth of such coin in any one year.

In lieu of any seignorage or profits which the Portuguese Government might otherwise claim on account of the coinage on their behalf provided by this clause, the Governor General of British India engages to pay the Governor General of Portuguese India an indemnity of four thousand rupees per annum, commencing from the first day of November, one thousand eight hundred and eighty-three, and continuing as long as this Convention remains in force.

6. All silver and copper Portuguese coins, coined under the provisions of this Convention, shall, while this Convention remains in force, be legal tender in payment or on account throughout British India to the same extent, and subject to the same exceptions in the case of coin which has been called in, or is under weight, or has been clipped, filed or defaced, as in the case of the corresponding silver and copper coins issued by the authority of the Government of British India for the time being in British India.

All silver and copper coin which has been issued by the authority of the Government of British India shall, to the said same extent and subject to the same exceptions, be a legal tender in payment or on account throughout Portuguese India.

7. The Governor General of Portuguese India agrees that, if at any time while this Convention continues in force the Government of British India should recall the whole body of British Indian coin corresponding to any description of Portuguese coin issued under this Convention, or change the monetary system of British India, he will, if requested by such Government so to do, recall all Portuguese coin of that description, or change in like manner, as the case may be, the monetary system of Portuguese India: provided that the expense incurred in recalling such coin or making such change shall be defrayed by the Government of British India.

8. When any silver coin, purporting to have been issued under the provisions of this Convention, is tendered to any officer of the Government of British India, authorized by that Government to act under this clause, and is deemed by such officer to be counterfeit, or to have been reduced in weight otherwise than by reasonable wearing, he may, by himself or another (subject to the rules which the said Government prescribes in this behalf), cut or break such coin and return the pieces to the person tendering the same, and the loss caused by such cutting and breaking shall be borne by such person.

9. When any such silver coin which has been called in is tendered to any officer of the Government of British India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola; but the expense thus incurred shall, except when such coin has been recalled under clause 7, be borne by the Portuguese Government.

10. In like manner, when any British Indian coin which has been called in is tendered to any officer of the Government of Portuguese India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola, and the expense so incurred shall be borne by the Government of British India.

11. The Governor General of Portuguese India engages to appoint an officer who will receive, while this Convention continues in force, from any person tendering the coin next hereinafter mentioned, all silver coin issued under this Convention which may have lost, by reasonable wearing, more than two per cent., and shall pay for the same at the rate of one rupee per tola.

12. Nothing in this Convention shall be held to limit the powers of His Most Faithful Majesty the King of Portugal and the Algarves to establish at any time such system of paper currency as he may deem fit.

The Governor General of Portuguese India has the power for the present to issue the following paper money:—

Five-rupee notes, payable in copper.	
Ten-rupee notes, payable in silver.	
Twenty	ditto.
Fifty	ditto.
One hundred	ditto.
Five hundred	ditto.

The amount of paper money issued will never be above four per cent. of the value of the money in circulation, the Portuguese India Government notes being guaranteed by the Portuguese Government and payable to the bearer.

13. The Governor General of Portuguese India engages that, whenever the Government of British India exercises in respect of British India generally, or of all the territories adjacent to Portuguese India, the powers conferred on it under a certain Act of the Governor General of British India in Council, called "The Indian Weights and Measures of Capacity Act, 1871," then he, the said Governor General of Portuguese India, will enforce throughout Portuguese India provisions similar to those of that Act.

14. This Convention shall come into force on the first day of November, one thousand eight hundred and eighty, and shall remain in force until the expiration of a year counting from the

day on which one or other of the Contracting Parties shall have given notice to the other of its intention to put an end to it: provided that no such notice shall be given until four years after the date on which the Convention comes into force.

15. The Governor General of Portuguese India undertakes that, in the event of this Convention being put an end to under clause 14 or otherwise, no coins resembling any of the coins struck under this Convention shall be struck in or imported into Portuguese India, or shall be struck under the authority of, or with the sanction of, His Most Faithful Majesty in any other place.

Done at Pangim on the twelfth day of April, one thousand eight hundred and eighty.

(Sd.) CAETANO ALDRE. D'ALMEIDA ALBUQUERQUE,
Governor General of Portuguese India.

Done at Calcutta on the eighteenth day of March, one thousand eight hundred and eighty.

(Sd.) LYTTON,
Viceroy and Governor General of British India.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

The Gazette of India.

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SIMLA, SATURDAY JUNE 4, 1881.

☞ **Separate paging is given to this Part in order that it may be filed as a separate compilation.**

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th May, 1881, and is hereby promulgated for general information:—

ACT No. XVII OF 1881.

An Act to give effect to the Convention between the Governors General of British India and Portuguese India regarding their respective systems of moneys, weights and measures.

Preamble.

WHEREAS by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it was provided that the High Contracting Parties should use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions:

And whereas by the same article it was further provided that the detailed measures to be adopted should form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed within two years from the date when the said Treaty came into force:

And whereas the said Treaty came into force on the fifteenth day of January, 1880:

And whereas, in pursuance of the said recited article, the Convention set forth in the schedule hereto annexed has been made:

It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Portuguese Convention Act, 1881."

Local extent.

It extends to the whole of British India.

Commencement and continuance.

It shall come into force at once, and shall remain in force until the expiration of one year from the date of any notice which may be given under the fourteenth clause of the said Convention.

Provisions of Convention enacted.

2. The provisions of the said Convention, so far as they are binding upon the Government of British India, shall be deemed to have the force of law.

Act XXIII of 1870 to apply to coin and bullion made and brought for coinage to mint under Convention.

3. The provisions of the Indian Coinage Act, 1870, or any other law for the time being in force relating to coinage and the mint, shall, so far as they are consistent with the said Convention, apply to all coin made, and bullion brought for coinage to the mint, under the said Convention, as if such coin and bullion were respectively made and brought for coinage to the mint under the said Act.

THE SCHEDULE.

Whereas, by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it is provided that the High Contracting Parties shall use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions; and whereas by the same article it is further provided that the detailed measures to be adopted shall form the subject of a separate Convention between the Governors General of British India and

Portuguese India, to be executed within two years from the date when the said Treaty comes into force; and whereas the said Treaty came into force on the fifteenth day of January, 1880:

In pursuance of the said article, the following Convention has been made:—

1. The Governor General of Portuguese India shall adopt, in the Portuguese possessions in India, the monetary system of British India, for the time being in force, provided that the coins shall have on one side the effigy of the King of Portugal, with the legend *Ludovicus I, Portugaliæ et Algarbiorum Rex*, around it, or such other effigy and legend as the said Governor General may from time to time desire, and on the other side the value of each coin, the year of the Christian era, and the words *India Portugueza*.

2. Subject to the provisions of clause 7, so long as this Convention remains in force, the following coins and no others shall be struck for Portuguese India:—

Silver.—Rupee, weighing 180 grains troy;

Half-rupee, weighing 90 grains troy;

Quarter-rupee, weighing 45 grains troy;

Eighth of a rupee, weighing 22½ grains troy.

The standard fineness of the said silver coins shall be eleven-twelfths of fine silver and one-twelfth of alloy, subject to a remedy not exceeding the following:—

	Remedy in weight.	Remedy in fineness.
Rupee ...	Five thousandths.	Two thousandths.
Half-rupee ...		
Quarter-rupee...	Seven thousandths.	Three thousandths.
Eighth of a rupee	Ten thousandths.	

Copper.—Half *tanga*, weighing 200 grains troy, and corresponding with the double pice or half-anna of British India;

Quarter *tanga*, weighing 100 grains troy, and corresponding with the pice of British India;

Eighth of a *tanga*, weighing 50 grains troy, and corresponding with the half-pice of British India;

Real, or twelfth of a *tanga*, corresponding with the pie of British India;

In the making of copper coins, a remedy shall be allowed not exceeding one-fortieth in weight.

The value in copper of one Portuguese rupee will be sixteen Portuguese *tangas*, sixty-four quarter *tangas* or pices, or one hundred and ninety-two *reaes* or pies.

3. The Portuguese silver and copper coins established by this Convention shall be issued by the authority of the Government of Portuguese India, and shall be coined on behalf of the said Government by the Government of British India, and by no other agency whatever.

The Governor General of Portuguese India engages that, while this Convention continues in force, no coins other than those established by this Convention shall be coined in or imported into Portuguese India.

4. With the view of obtaining in the shortest possible time the desired uniformity of coinage throughout the respective Indian possessions of the High Contracting Parties, the Governor General of British India engages that the Government of British India shall—

(*a*) forego, for the period of three years from the date on which this Convention comes into force, all duty or other charge for melting, cutting, refining or recoining any coin of the existing Portuguese Indian silver currency tendered for recoinage into Portuguese Indian coin;

(*b*) deliver, for the period of five years from the date of this Convention, copper coins of the Portuguese copper currency established by this Convention in exchange for copper coins of the existing Portuguese Indian copper currency which may be brought to the said Mint for the purpose of such exchange, at the value represented by such last-mentioned coins in the existing Portuguese currency. The relative representative value of the old and new coin to be thus exchanged on equal terms, and without charge for manufacture, shall, if the Governor General of Portuguese India so desires, be determined, once for all, by a mixed commission appointed in the manner provided in the sixteenth article of the above-cited Treaty;

(*c*) advance to the Governor General of Portuguese India, in the Portuguese currency established by this Convention, such sums in such denominations of coin, and in such instalments (if any), as the said Governor General of Portuguese India may require: provided—

1*stly*.—That the amount of such advances outstanding at any time shall not exceed in the whole ten lákhs of rupees.

2*ndly*.—That an interval of two months shall be allowed for compliance with any such requisition, and that no such advance shall be made after the expiration of eighteen months from the date on which this Convention comes into force.

3*rdly*.—That every such advance shall be, within two months, repaid in coin of the existing Portuguese Indian currency, equivalent thereto in intrinsic value ascertained upon assay at Her Majesty's Mint, or in copper coin of the existing Portuguese Indian currency valued as prescribed in clause (*b*).

5. The Governor General of British India engages that the Government of British India shall,—

(*a*) on presentation by or on behalf of the Governor General of Portuguese India of any silver bullion or coin at the Mint at Bombay, or at such other Mint as the said Government from time to time appoints, deliver to the said Governor General or his agent, after such interval as in the judgment of the Mint Master is necessary for the process of coinage, the produce of such silver bullion or coin, in the silver coin established by this Convention, subject, always, to the same duty, charges, fees and regulations as are for the time being in force for the conversion into British Indian currency of bullion and coin, presented at the said Mint: provided that, save as provided in clause 4, the said Government shall not be bound thus to deliver more than four lákhs of rupees in any one year;

(*b*) coin for the Governor General of Portuguese India the copper coins established by this Convention, to such amounts and in such denominations as the said Governor General may require, upon payment of the value inscribed upon such coins in the silver coin established by this Convention or in British Indian rupees: provided that, saving as engaged in clause 4, the said Government shall not be bound thus to coin more than twenty thousand rupees' worth of such coin in any one year.

In lieu of any seignorage or profits which the Portuguese Government might otherwise claim on account of the coinage on their behalf provided by this clause, the Governor General of British India engages to pay the Governor General of Portuguese India an indemnity of four thousand rupees per annum, commencing from the first day of November, one thousand eight hundred and eighty-three, and continuing as long as this Convention remains in force.

6. All silver and copper Portuguese coins, coined under the provisions of this Convention, shall, while this Convention remains in force, be a legal tender in payment or on account throughout British India to the same extent, and subject to the same exceptions in the case of coin which has been called in, or is under weight, or has been clipped, filed or defaced, as in the case of the corresponding silver and copper coins issued by the authority of the Government of British India for the time being in British India.

All silver and copper coin which has been issued by the authority of the Government of British India shall, to the said same extent and subject to the same exceptions, be a legal tender in payment or on account throughout Portuguese India.

7. The Governor General of Portuguese India agrees that, if at any time while this Convention continues in force the Government of British India should recall the whole body of British Indian coin corresponding to any description of Portuguese coin issued under this Convention, or change the monetary system of British India, he will, if requested by such Government so to do, recall all Portuguese coin of that description, or change in like manner, as the case may be, the monetary system of Portuguese India: provided that the expense incurred in recalling such coin or making such change shall be defrayed by the Government of British India.

8. When any silver coin, purporting to have been issued under the provisions of this Convention, is tendered to any officer of the Government of British India, authorized by that Government to act under this clause, and is deemed by such officer to be counterfeit, or to have been reduced in weight otherwise than by reasonable wearing, he may, by himself or another (subject to the rules which the said Government prescribes in this behalf), cut or break such coin and return the pieces to the person tendering the same, and the loss caused by such cutting and breaking shall be borne by such person.

9. When any such silver coin which has been called in is tendered to any officer of the Government of British India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola; but the expense thus incurred shall, except when such coin has been recalled under clause 7, be borne by the Portuguese Government.

10. In like manner, when any British Indian coin which has been called in is tendered to any officer of the Government of Portuguese India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola, and the expense so incurred shall be borne by the Government of British India.

11. The Governor General of Portuguese India engages to appoint an officer who will receive, while this Convention continues in force, from any person tendering the coin next hereinafter mentioned, all silver coin issued under this Convention which may have lost, by reasonable wearing, more than two per cent., and shall pay for the same at the rate of one rupee per tola.

12. Nothing in this Convention shall be held to limit the powers of His Most Faithful Majesty the King of Portugal and the Algarves to establish at any time such system of paper currency as he may deem fit.

The Governor General of Portuguese India has the power for the present to issue the following paper money:—

Five-rupee notes, payable in copper.	
Ten-rupee notes, payable in silver.	
Twenty	ditto.
Fifty	ditto.
One hundred	ditto.
Five hundred	ditto.

The amount of paper money issued will never be above four per cent. of the value of the money in circulation, the Portuguese India Government notes being guaranteed by the Portuguese Government and payable to the bearer.

13. The Governor General of Portuguese India engages that, whenever the Government of British India exercises in respect of British India generally, or of all the territories adjacent to Portuguese India, the powers conferred on it under a certain Act of the Governor General of British India in Council, called "The Indian Weights and Measures of Capacity Act, 1871," then he, the said Governor General of Portuguese India, will enforce throughout Portuguese India provisions similar to those of that Act.

14. This Convention shall come into force on the first day of November, one thousand eight hundred and eighty, and shall remain in force until the expiration of a year counting from the

day on which one or other of the Contracting Parties shall have given notice to the other of its intention to put an end to it: provided that no such notice shall be given until four years after the date on which the Convention comes into force.

15. The Governor General of Portuguese India undertakes that, in the event of this Convention being put an end to under clause 14 or otherwise, no coins resembling any of the coins struck under this Convention shall be struck in or imported into Portuguese India, or shall be struck under the authority of, or with the sanction of, His Most Faithful Majesty in any other place.

Done at Pangim on the twelfth day of April, one thousand eight hundred and eighty.

(Sd.) CAETANO ALDRE. D'ALMEIDA ALBUQUERQUE,
Governor General of Portuguese India.

Done at Calcutta on the eighteenth day of March, one thousand eight hundred and eighty.

(Sd.) LYTTON,
Viceroy and Governor General of British India.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY JUNE 11, 1881.

☞ **Separate paging is given to this Part in order that it may be filed as a separate compilation.**

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th May, 1881, and is hereby promulgated for general information:—

ACT No. XVII OF 1881.

An Act to give effect to the Convention between the Governors General of British India and Portuguese India regarding their respective systems of moneys, weights and measures.

Preamble.

WHEREAS by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it was provided that the High Contracting Parties should use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions:

And whereas by the same article it was further provided that the detailed measures to be adopted should form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed within two years from the date when the said Treaty came into force:

And whereas the said Treaty came into force on the fifteenth day of January, 1880:

And whereas, in pursuance of the said recited article, the Convention set forth in the schedule hereto annexed has been made:

It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Portuguese Convention Act, 1881."

Local extent.

It extends to the whole of British India.

Commencement and continuance.

It shall come into force at once, and shall remain in force until the expiration of one year from the date of any notice which may be given under the fourteenth clause of the said Convention.

Provisions of Convention enacted.

2. The provisions of the said Convention, so far as they are binding upon the Government of British India, shall be deemed to have the force of law.

Act XXIII of 1870 to apply to coin and bullion made and brought for coinage to mint under Convention.

3. The provisions of the Indian Coinage Act, 1870, or any other law for the time being in force relating to coinage and the mint, shall, so far as they are consistent with the said Convention, apply to all coin made, and bullion brought for coinage to the mint, under the said Convention, as if such coin and bullion were respectively made and brought for coinage to the mint under the said Act.

THE SCHEDULE.

Whereas, by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it is provided that the High Contracting Parties shall use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions; and whereas by the same article it is further provided that the detailed measures to be adopted shall form the subject of a separate Convention between the Governors General of British India and

Portuguese India, to be executed within two years from the date when the said Treaty comes into force; and whereas the said Treaty came into force on the fifteenth day of January, 1880:

In pursuance of the said article, the following Convention has been made:—

1. The Governor General of Portuguese India shall adopt, in the Portuguese possessions in India, the monetary system of British India, for the time being in force, provided that the coins shall have on one side the effigy of the King of Portugal, with the legend *Ludovicus I, Portugaliæ et Algarbiorum Rex*, around it, or such other effigy and legend as the said Governor General may from time to time desire, and on the other side the value of each coin, the year of the Christian era, and the words *India Portugueza*.

2. Subject to the provisions of clause 7, so long as this Convention remains in force, the following coins and no others shall be struck for Portuguese India:—

Silver.—Rupee, weighing 180 grains troy;

Half-rupee, weighing 90 grains troy;

Quarter-rupee, weighing 45 grains troy;

Eighth of a rupee, weighing 22½ grains troy.

The standard fineness of the said silver coins shall be eleven-twelfths of fine silver and one-twelfth of alloy, subject to a remedy not exceeding the following:—

	Remedy in weight.	Remedy in fineness.
Rupee ...	Five thousandths.	Two thousandths.
Half-rupee ...		
Quarter-rupee...	Seven thousandths.	Three thousandths.
Eighth of a rupee	Ten thousandths.	

Copper.—Half *tanga*, weighing 200 grains troy, and corresponding with the double pice or half-anna of British India;

Quarter *tanga*, weighing 100 grains troy, and corresponding with the pice of British India;

Eighth of a *tanga*, weighing 50 grains troy, and corresponding with the half-pice of British India;

Reál, or twelfth of a *tanga*, corresponding with the pie of British India;

In the making of copper coins, a remedy shall be allowed not exceeding one-fortieth in weight.

The value in copper of one Portuguese rupee will be sixteen Portuguese *tangas*, sixty-four quarter *tangas* or pices, or one hundred and ninety-two *reaes* or pies.

3. The Portuguese silver and copper coins established by this Convention shall be issued by the authority of the Government of Portuguese India, and shall be coined on behalf of the said Government by the Government of British India, and by no other agency whatever.

The Governor General of Portuguese India engages that, while this Convention continues in force, no coins other than those established by this Convention shall be coined in or imported into Portuguese India.

4. With the view of obtaining in the shortest possible time the desired uniformity of coinage throughout the respective Indian possessions of the High Contracting Parties, the Governor General of British India engages that the Government of British India shall—

(*a*) forego, for the period of three years from the date on which this Convention comes into force, all duty or other charge for melting, cutting, refining or recoining any coin of the existing Portuguese Indian silver currency tendered for recoinage into Portuguese Indian coin;

(*b*) deliver, for the period of five years from the date of this Convention, copper coins of the Portuguese copper currency established by this Convention in exchange for copper coins of the existing Portuguese Indian copper currency which may be brought to the said Mint for the purpose of such exchange, at the value represented by such last-mentioned coins in the existing Portuguese currency. The relative representative value of the old and new coin to be thus exchanged on equal terms, and without charge for manufacture, shall, if the Governor General of Portuguese India so desires, be determined, once for all, by a mixed commission appointed in the manner provided in the sixteenth article of the above-cited Treaty;

(*c*) advance to the Governor General of Portuguese India, in the Portuguese currency established by this Convention, such sums in such denominations of coin, and in such instalments (if any), as the said Governor General of Portuguese India may require: provided—

1*stly*.—That the amount of such advances outstanding at any time shall not exceed in the whole ten lákhs of rupees.

2*ndly*.—That an interval of two months shall be allowed for compliance with any such requisition, and that no such advance shall be made after the expiration of eighteen months from the date on which this Convention comes into force.

3*rdly*.—That every such advance shall be, within two months, repaid in coin of the existing Portuguese Indian currency, equivalent thereto in intrinsic value ascertained upon assay at Her Majesty's Mint, or in copper coin of the existing Portuguese Indian currency valued as prescribed in clause (*b*).

5. The Governor General of British India engages that the Government of British India shall,—

(*a*) on presentation by or on behalf of the Governor General of Portuguese India of any silver bullion or coin at the Mint at Bombay, or at such other Mint as the said Government from time to time appoints, deliver to the said Governor General or his agent, after such interval as in the judgment of the Mint Master is necessary for the process of coinage, the produce of such silver bullion or coin, in the silver coin established by this Convention, subject, always, to the same duty, charges, fees and regulations as are for the time being in force for the conversion into British Indian currency of bullion and coin, presented at the said Mint: provided that, save as provided in clause 4, the said Government shall not be bound thus to deliver more than four lákhs of rupees in any one year;

(*b*) coin for the Governor General of Portuguese India the copper coins established by this Convention, to such amounts and in such denominations as the said Governor General may require, upon payment of the value inscribed upon such coins in the silver coin established by this Convention or in British Indian rupees: provided that, saving as engaged in clause 4, the said Government shall not be bound thus to coin more than twenty thousand rupees' worth of such coin in any one year.

In lieu of any seignorage or profits which the Portuguese Government might otherwise claim on account of the coinage on their behalf provided by this clause, the Governor General of British India engages to pay the Governor General of Portuguese India an indemnity of four thousand rupees per annum, commencing from the first day of November, one thousand eight hundred and eighty-three, and continuing as long as this Convention remains in force.

6. All silver and copper Portuguese coins, coined under the provisions of this Convention, shall, while this Convention remains in force, be legal tender in payment or on account throughout British India to the same extent, and subject to the same exceptions in the case of coin which has been called in, or is under weight, or has been clipped, filed or defaced, as in the case of the corresponding silver and copper coins issued by the authority of the Government of British India for the time being in British India.

All silver and copper coin which has been issued by the authority of the Government of British India shall, to the said same extent and subject to the same exceptions, be a legal tender in payment or on account throughout Portuguese India.

7. The Governor General of Portuguese India agrees that, if at any time while this Convention continues in force the Government of British India should recall the whole body of British Indian coin corresponding to any description of Portuguese coin issued under this Convention, or change the monetary system of British India, he will, if requested by such Government so to do, recall all Portuguese coin of that description, or change in like manner, as the case may be, the monetary system of Portuguese India: provided that the expense incurred in recalling such coin or making such change shall be defrayed by the Government of British India.

8. When any silver coin, purporting to have been issued under the provisions of this Convention, is tendered to any officer of the Government of British India, authorized by that Government to act under this clause, and is deemed by such officer to be counterfeit, or to have been reduced in weight otherwise than by reasonable wearing, he may, by himself or another (subject to the rules which the said Government prescribes in this behalf), cut or break such coin and return the pieces to the person tendering the same, and the loss caused by such cutting and breaking shall be borne by such person.

9. When any such silver coin which has been called in is tendered to any officer of the Government of British India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola; but the expense thus incurred shall, except when such coin has been recalled under clause 7, be borne by the Portuguese Government.

10. In like manner, when any British Indian coin which has been called in is tendered to any officer of the Government of Portuguese India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola, and the expense so incurred shall be borne by the Government of British India.

11. The Governor General of Portuguese India engages to appoint an officer who will receive, while this Convention continues in force, from any person tendering the coin next hereinafter mentioned, all silver coin issued under this Convention which may have lost, by reasonable wearing, more than two per cent., and shall pay for the same at the rate of one rupee per tola.

12. Nothing in this Convention shall be held to limit the powers of His Most Faithful Majesty the King of Portugal and the Algarves to establish at any time such system of paper currency as he may deem fit.

The Governor General of Portuguese India has the power for the present to issue the following paper money:—

Five-rupee notes, payable in copper.	
Ten-rupee notes, payable in silver.	
Twenty	ditto.
Fifty	ditto.
One hundred	ditto.
Five hundred	ditto.

The amount of paper money issued will never be above four per cent. of the value of the money in circulation, the Portuguese India Government notes being guaranteed by the Portuguese Government and payable to the bearer.

13. The Governor General of Portuguese India engages that, whenever the Government of British India exercises in respect of British India generally, or of all the territories adjacent to Portuguese India, the powers conferred on it under a certain Act of the Governor General of British India in Council, called "The Indian Weights and Measures of Capacity Act, 1871," then he, the said Governor General of Portuguese India, will enforce throughout Portuguese India provisions similar to those of that Act.

14. This Convention shall come into force on the first day of November, one thousand eight hundred and eighty, and shall remain in force until the expiration of a year counting from the

day on which one or other of the Contracting Parties shall have given notice to the other of its intention to put an end to it: provided that no such notice shall be given until four years after the date on which the Convention comes into force.

15. The Governor General of Portuguese India undertakes that, in the event of this Convention being put an end to under clause 14 or otherwise, no coins resembling any of the coins struck under this Convention shall be struck in or imported into Portuguese India, or shall be struck under the authority of, or with the sanction of, His Most Faithful Majesty in any other place.

Done at Pangim on the twelfth day of April, one thousand eight hundred and eighty.

(Sd.) CAETANO ALDRE. D'ALMEIDA ALBUQUERQUE,
Governor General of Portuguese India.

Done at Calcutta on the eighteenth day of March, one thousand eight hundred and eighty.

(Sd.) LYTTON,
Viceroy and Governor General of British India.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 8th June, 1881, and is hereby promulgated for general information :—

ACT No. XVIII OF 1881.

THE CENTRAL PROVINCES LAND-REVENUE ACT, 1881.

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SCHEDULE—ENACTMENTS REPEALED.

An Act to consolidate and amend the law relating to Land-revenue and the powers of Revenue-officers in the Central Provinces.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Land-revenue and to the powers of Revenue-officers in the Central Provinces; It is hereby enacted as follows:—

PART I.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Central Provinces Land-revenue Act, 1881":

Local extent.

It extends to all the territories for the time being under the administration of the Chief Commissioner of the Central Provinces, except those specified in Part VI of the first schedule of the Scheduled Districts Act, 1874:

Commencement.

And it shall come into force on such day as the Chief Commissioner, with the previous sanction of the Governor General in Council, may direct by notification in the local official Gazette.

Enactments repealed.

2. On and from such day the enactments mentioned in the schedule hereto annexed, so far as they relate to the territories to which this Act extends, and all other rules, regulations and enactments relating to the settlement and collection of the land-revenue in such territories, shall be repealed.

Pending proceedings.

3. All proceedings relating to matters dealt with by this Act and, when this Act comes into force, pending before officers by whom they would be cognizable under this Act, shall be deemed, so far as may be, to have been commenced hereunder.

Interpretation-clause.

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

"Assistant Commissioner":

(1) "Assistant Commissioner" includes also "Extra Assistant Commissioner":

"Legal Practitioner":

(2) "Legal Practitioner" means an advocate, vakíl or attorney of any High Court, a pleader, mukhtár or revenue-agent:

"Village-cess":

(3) "Village-cess" means any cess which a person resident or holding lands in a village pays or renders to the proprietors as such of the village, and includes service rendered or things furnished as well as money paid:

"Recognized agent":

(4) "Recognized agent" means a person authorized in writing by any party to a proceeding under this Act to make appearances and applications and to do other acts on his behalf in such proceeding and also belonging to any class which the Chief Commissioner may, from time to time, by notification in the official Gazette, declare in this behalf:

"Agricultural year":

(5) "Agricultural year" means the year commencing on the first day of June, or on such other date as the Chief Commissioner may, in the case of any specified District or Districts, from time to time, appoint:

"Sír-land":

(6) "Sír-land" means (*a*) land recorded as "sír" in the papers of the last preceding settlement of the local area in which such land is situate; and (*b*) land not so recorded, but which has been cultivated by the proprietor or one of the proprietors thereof for a period of not less than twelve consecutive years; and (*c*) waste land which has been broken up by the proprietor or one of the proprietors thereof and cultivated by him for a period of not less than six consecutive years; and (*d*) in Sambalpúr, includes also "bhogra" land.

Explanation.—Land which has, after the date of such settlement, or the expiry of such period of twelve years, or six years (as the case may be), been for a period of six consecutive years unoccupied by such proprietor is not sír-land. Land is not unoccupied by the proprietor when it is leased out by him with an express reservation of his sír-rights:

"Mahál":

(7) "Mahál" means any local area held under a separate engagement for the payment of the land-revenue direct to Government, and includes also any local area declared, under the provisions of this Act, to be a mahál:

"Village":

(8) "Village" includes any tract of land which, at the last settlement of such land, has been recognized as a village, or which the Chief Commissioner may, from time to time, declare to be a village for the purposes of this Act:

"Málguzár":

(9) "Málguzár" means a person who, under the provisions of this Act, has accepted, or is to be deemed to have accepted, the assessment of a mahál, and includes his representatives and assigns; and also any person with whom a settlement has been made before this Act comes into force, and his representatives and assigns:

"Málik-makbúzá":

(10) "Málik-makbúzá" means any person owning one or more plots of land assessed with revenue in a mahál; but it does not include a málguzár or inferior proprietor:

"Lambardár":

(11) "Lambardár" means a person appointed in manner prescribed by this Act to represent the proprietary body of a mahál in its relations with the Government:

"Sub-lambardár":

(12) "Sub-lambardár" means a person so appointed to represent the inferior proprietary body of a mahál in its relations with the superior proprietors:

"Mukaddam":

(13) "Mukaddam" means the executive headman of a village, appointed in manner prescribed by this Act:

"Tenant":

(14) "Tenant" means a person who holds land of another person, and is, or but for a special contract would be, liable to pay rent for such land to such other person; but it does not include a farmer, mortgagee or thekadár of proprietary rights.

Explanation.—An inferior proprietor is not, as such, a tenant:

"Rent":

(15) "Rent" means whatever is paid, delivered or rendered, in money, kind or service, by a tenant on account of the use or occupation of land let to him:

"Absolute occupancy-tenant":

(16) "Absolute occupancy-tenant" means, in reference to any land, a tenant who, at a settlement of such land made before this Act comes into force, or after such a settlement but before this Act comes into force, was recorded, by order of a Revenue or Settlement officer, in respect of such land, as an "absolute occupancy-raiyat," or in terms equivalent thereto:

"Record-of-rights."

(17) "Record-of-rights" includes the supplementary administration-paper prepared at or after the time of making a settlement before this Act comes into force.

PART II.

CHAPTER II.

OF REVENUE-OFFICERS: THEIR POWERS AND PROCEDURE.

Chief Controlling Revenue-authority.

5. The Chief Commissioner shall, subject to the control of the Governor General in Council, be the Chief Controlling Revenue-authority.

Revenue-officers.

6. Besides the Chief Commissioner, there shall be the following classes of Revenue-officers (namely):—

(*a*) Commissioners, who, subject to the control of the Chief Commissioner, shall be the Chief Revenue-authorities within their respective divisions:

(*b*) Deputy Commissioners, who, subject to the control of the Commissioner, shall be the Chief Revenue-authorities within their respective districts:

(*c*) Assistant Commissioners, who shall be subordinate to, and under the control of, the Deputy Commissioners of the districts to which they are respectively attached:

(*d*) Tahsíldárs, who, subject to the control of the Deputy Commissioner, shall be the Chief Executive Revenue-authorities in the tahsíls to which they are respectively attached:

(*e*) Náib Tahsíldárs, who shall be subordinate to the Tahsíldárs of the tahsíls to which they are respectively attached.

Appointment, suspension and removal of Commissioners, Deputy and Assistant Commissioners.

7. Subject to the control of the Governor General in Council, the Chief Commissioner shall appoint, and may suspend or remove, Commissioners, Deputy Commissioners and Assistant Commissioners.

Appointment, suspension and removal of Tahsíldárs and Náib Tahsíldárs.

8. The Chief Commissioner shall appoint, and may suspend or remove, Tahsíldárs; and may also make rules for regulating the appointment, duties, suspension and removal of Náib Tahsíldárs.

Persons holding office when Act comes into force.

9. All Commissioners, Deputy Commissioners, Assistant Commissioners, Tahsíldárs and Náib Tahsíldárs holding office as such in the territories to which this Act extends when this Act comes into force shall be deemed to have been appointed hereunder.

Power to appoint additional Commissioners, Deputy Commissioners and Tahsíldárs.

10. The Chief Commissioner may appoint any person to be an additional Tahsíldár in any tahsíl, or, with the sanction of the Governor General in Council, to be an additional Commissioner or additional Deputy Commissioner in any division or district, and may suspend or remove any person so appointed, but subject, in the case of an additional Commissioner or additional Deputy Commissioner, to the like sanction.

The Chief Commissioner may invest any additional Commissioner, Deputy Commissioner or Tahsíldár appointed under this section with all or any of the powers conferred by this Act on a Commissioner, Deputy Commissioner or Tahsíldár, as the case may be.

Chief Commissioner may invest Assistant Commissioner with powers of Deputy Commissioner.

11. The Chief Commissioner may invest any Assistant Commissioner attached to a district with all or any of the powers conferred by this Act on Deputy Commissioners.

Officers transferred to retain powers with which they were invested.

12. Whenever any Assistant Commissioner, Tahsíldár or Náib Tahsíldár is transferred from one district or tahsíl to another, he shall, unless the Chief Commissioner otherwise directs, exercise in the district or tahsíl to which he is transferred all the powers with which he was, under any provision of this Act, invested by the Chief Commissioner in the district or tahsíl from which he is transferred.

Provision for discharge of duties of Deputy Commissioner dying or being disabled.

13. When a Deputy Commissioner dies or is disabled from performing his duties, such officer as the Chief Commissioner may by rule direct shall take executive charge of his district, and shall be deemed to be a Deputy Commissioner under this Act, until a successor to the Deputy Commissioner so dying or disabled is appointed and such successor

takes charge of his office, or until the person so disabled resumes charge of his office.

Chief Commissioner may alter limits of district or tahsíl.

14. The Chief Commissioner may, from time to time, by notification in the official Gazette, alter the limits of any district or tahsíl, create new districts or tahsíls and abolish existing districts or tahsíls.

Power to invest Revenue-officers,—

15. The Chief Commissioner may, subject to the control of the Governor General in Council, invest any Revenue-officer with any of the following powers:—

with power conferred by Code of Civil Procedure;

for the purpose of disposing of cases under this Act, any power conferred by the Code of Civil Procedure on a Civil Court;

with power to delegate powers.

power to delegate to any Revenue-officer subordinate to him the exercise of any power or performance of any duty conferred or imposed on him by this Act;

and, subject to the like control, may determine the Revenue-officer by whom any case or class of cases for which no express provision in this behalf is made in this Act shall be disposed of.

Power of Deputy Commissioner to distribute work.

16. Subject to any rules which the Chief Commissioner may make in this behalf, a Deputy Commissioner may—

(*a*) refer any case to any Revenue-officer subordinate to him for investigation and report, or, if such officer has power to dispose of such case, for disposal; or

(*b*) direct that any Revenue-officer subordinate to him shall, without such reference, deal with any case or class of cases arising within any specified area, and either investigate and report on such case or class, or, if he has power, dispose of it himself.

The subordinate Revenue-officer shall submit his report on any case referred to him under this section for report to the Deputy Commissioner, or otherwise, as may be directed in the order of reference; and the officer receiving such report may, if he has power to dispose of the case, dispose of the same, or may return it for further investigation to the officer submitting the report, or may hold such investigation himself.

Power of superior Revenue-authorities to withdraw and transfer cases.

17. The Chief Commissioner, the Commissioner or the Deputy Commissioner may withdraw any case pending before any Revenue-officer subordinate to him, and either dispose of it himself, or refer it for disposal to any other Revenue-officer subordinate to him and having power to dispose of the same.

Power of Revenue-officers to enter on land, &c.

18. All Revenue-officers and persons acting under their orders may, in the performance of any duty under this Act, enter upon and survey land, and demarcate boundaries, and do all other acts necessary to the business in which they are engaged.

Power to make rules to regulate procedure.

19. The Chief Commissioner may, with the previous sanction of the Governor General in Council, make rules consistent with this Act for regulating the procedure of Revenue-officers in cases for which a procedure is not prescribed by this Act, and may, by any such rule, direct that any provisions of the Code of Civil Procedure shall apply, with or without modification, to all or any classes of cases before Revenue-officers.

Persons by whom appearances and applications may be made before and to Revenue-officers.

20. All appearances before, applications to, and acts to be done before, any Revenue-officer under this Act may be made or done—

(*a*) by the parties themselves; or,

(*b*) with the permission of the officer, by their recognized agents or any legal practitioner:

Obligation of parties to attend in person.

Provided that the employment of a legal practitioner or recognized agent shall not excuse the personal attendance of a party to any proceeding in cases where such attendance is required by any order of the Revenue-officer.

Legal practitioner's or agent's fees not allowed unless for special reasons.

21. The fees of a legal practitioner or recognized agent shall not be allowed as costs before any Revenue-officer unless such officer considers, for reasons to be recorded by him in writing, that such fees should be allowed.

Appeals.

22. An appeal shall lie against every decision or order under this Act—

(*a*) when such decision or order is passed by any Revenue-officer subordinate to the Deputy Commissioner, except an Assistant Commissioner exercising the powers of a Deputy Commissioner,—to the Deputy Commissioner;

(*b*) when such decision or order is passed by a Deputy Commissioner, or by an Assistant Commissioner exercising the powers of a Deputy Commissioner, whether in the first instance or on appeal,—to the Commissioner of the division;

(*c*) when such decision or order is passed on appeal or otherwise by the Commissioner of a division,—to the Chief Commissioner:

Provided that in no case shall a third appeal be allowed.

Limitation of appeals.

23. No appeal shall lie—

(*a*) in the Court of the Deputy Commissioner or an Assistant Commissioner exercising the powers of a Deputy Commissioner—after the expiration of thirty days from the date of the decision or order complained of; or

(*b*) in the Court of the Commissioner—after the expiration of sixty days from such date; or

(*c*) in the Court of the Chief Commissioner—after the expiration of ninety days from such date.

In computing such periods of limitation, and in all respects not herein specified, the provisions of the Indian Limitation Act, 1877, shall apply.

Powers of revision of Commissioner and Deputy Commissioner.

24. Any Commissioner or Deputy Commissioner may at any time, for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of, any Revenue-officer subordinate to him, call for and examine the record of any case pending before, or disposed of by, such officer, and may pass such order in reference thereto as he thinks fit:

Provided that he shall not under this section modify or reverse any order affecting any question of right between private persons, without having given to the parties interested reasonable notice to appear and be heard in support of such order.

Powers of revision of Chief Commissioner.

25. The Chief Commissioner may at any time call for and examine the record of any case pending before, or disposed of by, any Revenue-officer, and may pass such order in reference thereto as he thinks fit:

Provided that no order affecting any question of right between private persons shall be passed under this section unless the Chief Commissioner has given the parties interested an opportunity of being heard.

Review of orders.

26. Every Revenue-officer may, either on his own motion or on the application of any party interested, review, and on so reviewing modify, reverse or confirm orders passed by himself or by any of his predecessors in office:

Provided as follows—

(1) when a Commissioner or Deputy Commissioner thinks it necessary to review any order which he has not himself passed, and when an officer under the rank of a Deputy Commissioner proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction of the officer to whom he is immediately subordinate:

(2) no order shall be modified or reversed unless reasonable notice has been given to the parties interested to appear and be heard in support of such order:

(3) no order against which an appeal has been preferred shall be reviewed while such appeal is pending:

(4) no order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings; and no application for the review of such an order shall be entertained unless it is made within ninety days from the passing of the order, or unless the applicant satisfies the Revenue-officer that he had sufficient cause for not making the application within such period.

For the purposes of this section, the Deputy Commissioner shall be deemed to be the successor in office of any Revenue-officer who has left the district or has ceased to exercise powers as a Revenue-officer, and to whom there is no successor in office.

PART III.

OF SURVEY AND SETTLEMENT.

CHAPTER III.

PRELIMINARY.

Notification of revenue-survey.

27. Whenever it appears to the Chief Commissioner that a revenue-survey should be made in any local area, he shall publish a notification in the official Gazette directing that such survey be made, and cause translations of such notification in the language of the district to be posted up in conspicuous places in such area; and thereupon all officers in charge of such survey, their assistants, servants, agents and workmen may enter upon the lands to be surveyed, and erect survey-marks, and do all other acts necessary for making the survey.

Effect thereof.

Notification of settlement.

28. When any local area is to be settled, the Chief Commissioner may, with the previous sanction of the Governor General in Council, issue a notification of settlement, and in such notification shall—

(*a*) define the local area to be settled;

(*b*) specify the operations which are to be carried out in the settlement;

and may from time to time, with the like sanction, amend, alter or cancel such notification.

Power to amend notification.

Every such notification, amendment, alteration and cancellation shall be published in the local official Gazette.

Power to appoint Settlement-officers;

29. The Chief Commissioner may, from time to time, appoint one or more officers (hereinafter called Settlement-officers) to make the settlement of such area; and when he appoints more than one such officer, he shall appoint one of them (hereinafter called the Chief Settlement-officer) to control such settlement; and all other officers appointed for the purposes of such settlement shall be subordinate to the Chief Settlement-officer.

and to suspend and remove them.

The Chief Commissioner may suspend or remove any officer appointed under this section.

Settlement-officer may be invested with powers of Deputy Commissioner.

30. During the progress of the settlement of any local area, the Chief Commissioner may invest any Settlement-officer within such area with all or any of the powers of a Deputy Commissioner under this Act, to be exercised by him in such classes of cases as the Chief Commissioner may, from time to time, direct.

Certain provisions of Chapter II applied to Settlement-officers.

31. The provisions of section eleven and sections fifteen to twenty-six, both inclusive, shall apply, *mutatis mutandis*, to Settlement-officers and to proceedings before them, the expression "Settlement-officer" being read for the expressions "Assistant Commissioner" and "Revenue-officer," and the expression "Chief Settlement-officer," for the expression "Deputy Commissioner," wherever those expressions occur:

Provided that an appeal from any appealable order passed by a subordinate Settlement-officer shall lie to the Chief Settlement-officer if preferred within sixty days from the date of such order:

Provided also that no appeal shall lie from any decision of a Chief Settlement-officer which can be called in question in a Civil Court.

Appointment of Settlement-Commissioner;

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

(*a*) appoint a Settlement-Commissioner, and transfer to him, within any local area under settlement, all or any of the powers which the Commissioner of the division, if the land to be settled were wholly situate within such division, would otherwise exercise under this Act in matters connected with such settlement; and

(*b*) delegate to the Settlement-Commissioner such of his own powers in regard to matters connected with such settlement as he thinks fit.

Delegation to him of Chief Commissioner's powers.

33. When any local area is under settlement, the Chief Commissioner may invest any subordinate Settlement-officer with the powers of any of the first five grades of Courts described in section four of the Central Provinces Courts' Act, 1865, and the Chief Settlement-officer with the powers of a Court of a Deputy Commissioner described in the same Act, sections twelve, nineteen and twenty, for the trial, in the first instance, of any of the following classes of suits instituted within such area (namely) :—

Power to invest Settlement-officers with Civil Court powers.

(*a*) suits for arrears of rent due on account of any right of pasturage, forest-rights, fisheries or the like;

(*b*) suits by lambardárs for arrears of revenue payable through them by the proprietors whom they represent;

(*c*) suits by proprietors for their share of the profits of an estate or any part thereof after payment of the revenue and village-expenses, or for a settlement of accounts;

(*d*) suits by muáfidárs or assignees of revenue for arrears of revenue owing to them as such muáfidárs or assignees;

(*e*) suits by superior proprietors for arrears of revenue due to them as such superior proprietors;

(*f*) suits by proprietors and others in receipt of the rent of land against any agents employed by them in the management of land or collection of rents, or against the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession;

(*g*) suits regarding any matter which a Settlement-officer is required to decide or to enter in the record-of-rights, and of which Civil Courts can take cognizance;

(*h*) suits relating to land, or the rent, profits or occupation of land.

34. When the Chief Commissioner invests any subordinate Settlement-officer with the powers of a Civil Court for the trial of any of the suits mentioned in section thirty-three, the Chief Settlement-officer to whom such Settlement-officer is subordinate shall have the powers of the Court of a Deputy Commissioner described in the Central Provinces Courts' Act, 1865, sections twelve, nineteen and twenty, with reference to proceedings before, or decrees and orders of, such Settlement-officer in such suits.

Chief Settlement-officer to have powers of Deputy Commissioner.

35. When any local area is under settlement and Settlement-officers have been invested with the powers mentioned in section thirty-three in such local area, the Chief Commissioner may, with respect to all or to any of the suits specified in that section, declare that all or any of the decrees and orders passed in exercise of the powers of Courts of the first four grades aforesaid, by Assistant Commissioners or Tahsíldárs not being Settlement-officers, shall be appealable to the Chief Settlement-officer, and not to the Deputy Commissioner of the district.

Appeals in suits specified in section 33 when to lie to Chief Settlement-officer.

36. When any local area is under settlement and the Settlement-officers therein have been invested with powers under section thirty-three, the Chief Commissioner may withdraw from the jurisdiction of the ordinary Civil Courts within such area the classes of suits which Settlement-officers have power to dispose of under that section, or he may direct that, in respect of such suits, the Settlement-officers shall have concurrent jurisdiction with the ordinary Civil Courts:

Division of civil work between Settlement-officers and ordinary Courts.

Provided that no proceedings which have been inadvertently or erroneously taken before the Civil Court shall be deemed to be invalid merely on the ground that, by the Chief Commissioner's order, they should have been taken before a Settlement-officer.

37. Nothing in section thirty-one shall apply to suits and appeals or other proceedings instituted before, or determined by, Settlement-officers in pursuance of powers conferred upon them under section thirty-three, thirty-four or thirty-five.

Provisions of section 31 not to apply to certain suits.

38. Except as provided in sections thirty-three, thirty-four and thirty-five, the decrees and orders of a Settlement-officer passed, whether in the first instance or on appeal, in exercise of the powers of a Civil Court of any grade, shall, for the purposes of appeal, reference and revision, be deemed to be decrees and orders of a Civil Court of such grade, and no appeal shall lie under the provisions of section twenty-two from such decrees or orders.

Appeal, reference and revision.

39. Every settlement notified under section twenty-eight shall be deemed to be in progress until the Chief Commissioner, by notification in the official Gazette, declares that it is completed.

Duration of settlement operations.

When the settlement of any local area has been notified as completed, all the powers exercised by the Settlement-officers in such area shall cease; and all suits and applications pending before such officers shall be transferred to such of the Courts ordinarily having jurisdiction in such cases as the Commissioner of the Division directs, or, if there are no such Courts, shall be disposed of in such manner as the Chief Commissioner directs.

Cases pending at close of settlement-operations.

CHAPTER IV.

OF DEMARCATION.

Unowned Lands.

40. When any local area is under settlement, the Settlement-officer shall make lists of all lands in such area which appear to him to have no lawful owner, and shall thereupon issue a notification declaring his intention to demarcate such lands as the property of the Government and inviting every person having claims to or over them to present in his Court, within three months from the date of the notification, a petition in writing setting forth such claims and the respective grounds thereof.

Settlement-officer to invite claims to lands appearing to have no owner.

41. Every such notification shall be deemed to be an advertisement under Act No. XXIII of 1863 (*to provide for the adjudication of claims to waste lands*), section one;

Application of Act XXIII of 1863.

the demarcation of such lands shall be deemed to be a disposition of them within the meaning of that Act;

the Settlement-officer shall exercise all the powers vested in the Collector by that Act; and

claims to or over the land comprised in such notification shall be dealt with as nearly as may be in the manner prescribed in that Act.

42. Whenever a claim to the exercise or enjoyment of any right (not amounting to the right of exclusive possession) in, to or over, any land comprised in such notification is established, either before the Settlement-officer or before the Court constituted under the said Act No. XXIII of 1863, section seven, the Settlement-officer may assign to the claimant as his property a definite portion of such land, or, with the sanction of the Chief Commissioner, he may otherwise compensate the claimant; and such assignment or compensation shall be held to extinguish all claims on account of such exercise or enjoyment.

Procedure when limited right over land established.

Maháls.

43. The Settlement-officer may declare any local area to be a mahál.

Power to form maháls.

Excluded Lands.

44. For the purpose of excluding from all or any of the operations of the settlement any town or any land from which the owner can derive no profit, the Settlement-officer may mark off the site and determine the limits of such town or land;

Settlement-officer may exclude any town or land from settlement operations.

Provided that no land in respect of which land-revenue is payable at the date of the notification issued under section twenty-eight shall, under this section, be exempted from assessment without the sanction of the Chief Commissioner.

Boundary-marks.

45. When any local area is under settlement, the Settlement-officer may order all persons who have proprietary rights in the land comprised in such area to erect boundary-marks of such description and at such places as he thinks necessary in order to define the limits of the maháls, fields or other lands in their possession, or to repair boundary-marks already existing; and may fix a reasonable time for obeying his order;

Erection of new, and repair of existing, boundary-marks.

and if his order is not obeyed within such time, may cause such marks to be erected or repaired under his own orders, and may recover the cost of such erection or repair from the persons against whom his order was made, in such proportion as he thinks fit.

CHAPTER V.

OF THE ASSESSMENT OF LAND-REVENUE.

46. On every mahál a definite and separate sum shall be assessed as land-revenue; but the sum so assessed may be reduced in such manner and to such extent as the Chief Commissioner thinks fit, for any period not exceeding ten years from the date on which the assessment takes effect.

Separate sum to be assessed on every mahál.

Progressive assessments.

47. The Chief Commissioner may, from time to time, with the previous sanction of the Governor General in Council, give instructions to the Settlement-officer as to the principle on which land-revenue is to be assessed, and as to the sources of miscellaneous income to be taken into account in the assessment.

Matters as to which Chief Commissioner is to instruct Settlement-officer.

48. In assessing a mahál all land situate therein shall be taken into account except the following (that is to say) :—

What land taken into account in assessing mahál.

(*a*) land purchased free from revenue under any rules for the time being in force to regulate the sale of waste-lands;

(*b*) land in respect of which the revenue has been redeemed under any rules for the time being in force;

(*c*) land excluded from assessment under section forty-four;

(*d*) land in respect of which a claim to hold it free from revenue as against the Government is established under the provisions hereinafter contained;

(*e*) land which the Chief Commissioner, subject to the control of the Governor General in Council, may, from time to time, exempt from assessment.

49. The assessment of every mahál shall be offered to the entire proprietary body of such mahál; provided that, when superior and inferior proprietary rights co-exist in the same mahál, the Settlement-officer may, subject to such rules as the Chief Commissioner may make in this behalf, determine whether the assessment shall be offered to the superior or to the inferior proprietors.

Assessment to whom to be offered.

Subject to such rules as the Chief Commissioner may make in this behalf, the Settlement-officer may determine the manner and proportion in which the proprietary profits of the mahál shall be allotted between the superior and the inferior proprietors.

When a proprietor has mortgaged his rights in any mahál, and the mortgagee has entered into possession, such mortgagee, so long as he is in possession, shall, for the purposes of this section, stand in the place of the mortgagor.

50. When in a mahál in which superior and inferior proprietors co-exist, the Settlement-officer makes a settlement with the superior proprietors, he shall make on their behalf a sub-settlement with the inferior proprietors, by which such inferior proprietors shall be bound to pay to the superior proprietors an annual revenue equal to the land-revenue with which the mahál is assessed and to the profits to which the superior proprietors are entitled under section forty-nine.

Sub-settlement to be made with inferior proprietors when settlement is made with superior.

51. When in any such mahál the settlement is made with the inferior proprietors, the Settlement-officer may direct that the profits to which the superior

Power to give directions as to payment of certain profits of superior proprietors.

proprietors are entitled under section forty-nine, shall be paid by the inferior proprietors direct to such superior proprietors, or that such profits shall be collected as if they were land-revenue and shall be paid to the superior proprietors from the Government Treasury.

52. The Chief Commissioner may make rules prescribing the manner in which the Settlement-officer shall report for sanction his rates and method of assessment; and no assessment shall be offered without the previous sanction of the Chief Commissioner.

Power to make rules for reporting assessment for sanction.

53. In making any offer of assessment the Settlement-officer shall state that it is made subject to confirmation by the Governor General in Council, and also to revision by the Chief Commissioner at any time before such confirmation is received.

Offers of assessment to be made subject to revision and confirmation.

54. It shall be in the option of the persons to whom an assessment is offered to accept or refuse the same.

Option to accept or refuse assessment.

If they are willing to accept it, they shall make and sign an acceptance in writing, in such form as the Chief Commissioner may, from time to time, prescribe in this behalf, and deliver the same to the Settlement-officer.

Mode of acceptance.

55. Any proprietor who, within such reasonable period as may be specified by the Chief Commissioner, fails to make, sign and deliver such acceptance, or to inform the Settlement-officer that he refuses the proposed assessment, shall, if the Settlement-officer by an order in writing so directs, be deemed to have accepted such assessment.

Proprietor not accepting in manner prescribed may be deemed to have accepted.

56. Whenever the assessment of a mahál has been accepted under this Act, the persons who have accepted it shall be bound to pay the amount thereof from such date and for such term as the Chief Commissioner may appoint in this behalf, or, if at the expiry of that term no new assessment has been made and is ready to take effect, until a new assessment has been made and is ready to take effect: Provided as follows:—

Effect of acceptance of assessment.

1st—any assessment may be rescinded by the Chief Commissioner at any time before it has been confirmed by the Governor General in Council;

Assessment may be rescinded by Chief Commissioner;

2ndly—the Governor General in Council may rescind any assessment submitted to him for confirmation;

or by Governor General in Council.

3rdly—if all the málguzárs of a mahál, six months before the expiry of the term fixed under this section, apply in writing to the Deputy Commissioner stating that they are unwilling that the assessment should continue in force beyond the expiry of such term, the assessment shall, on the expiry of such term, cease to be in force.

Málguzárs may object to continuance of assessment beyond term of settlement.

57. Where there is but one class of proprietors in a mahál, and all refuse to accept in manner required by section fifty-four the assessment offered, the Settlement-officer may, with the previous sanction of the Chief Commissioner, exclude them from settlement for a period not exceeding thirty years from the date of such exclusion, and may either let the mahál in farm, or take it under direct management.

Procedure when assessment is refused.

58. If some of the proprietors consent, and some refuse, so to accept the assessment offered, the Settlement-officer may, with the previous sanction of the Chief Commissioner, if the interest of the recusant proprietors in the lands taken into account in the assessment consists entirely of lands held by them separately from the other proprietors, exclude such recusant proprietors from settlement for a period not exceeding thirty years from the date of such exclusion, and either let their lands in farm or take such lands under direct management.

Procedure when only some proprietors accept assessment.

In other cases the assessment of the entire mahál shall be offered to the proprietors who consented to accept the assessment when originally offered, and if they refuse it the mahál shall be dealt with under the provisions of section fifty-seven.

When the recusant proprietors are excluded under this section, the lands of the proprietors who consented to accept the assessment originally offered shall be deemed to be a separate mahál, and shall be assessed as such; and such assessment shall be offered to the proprietors so consenting; and if the lands of the recusant proprietors are let in farm, the farm shall be first offered to the proprietors who consented to accept the assessment originally offered.

59. When an assessment is offered in a mahál in which both superior and inferior proprietors co-exist—

Procedure on refusal of assessment in village in which superior and inferior rights co-exist.

(*a*) if all the proprietors of the class with which the Settlement-officer proposes to make the settlement refuse to accept as aforesaid the assessment offered, the assessment shall be offered to the proprietors of the other class; and if all such proprietors refuse the assessment, the Settlement-officer shall proceed as provided in section fifty-seven;

(*b*) if some only of the proprietors of the class with which the Settlement-officer proposes to make the settlement refuse the assessment, he may either proceed as if all had refused it or may deal with the mahál under section fifty-eight:

Provided that if, in the case contemplated by clause (*b*), the proprietors who consented to accept the assessment when originally offered refuse to accept it, such assessment shall be offered to the other class of proprietors.

60. If all or any of the inferior proprietors refuse any assessment offered under section fifty, the Settlement-officer may exclude them all from the sub-settlement, and assign the proprietary management and profits of the mahál to the superior proprietor for any term not exceeding the term of settlement.

Procedure on refusal of assessment by inferior proprietors.

61. Any proprietor excluded from settlement under section fifty-seven or section fifty-nine, clause (*a*), shall be entitled to receive from the Government an

Allowance to excluded proprietors.

annual allowance, the amount of which shall be fixed by the Chief Commissioner, but which shall not be less than five per cent., or more than ten per cent., on the amount of the assessment offered to him by the Settlement-officer.

62. Any proprietor excluded from settlement or sub-settlement under sections fifty-seven to sixty, both inclusive, shall be entitled to retain possession of his sír-land (if any) as if he were an absolute occupancy-tenant, and the rent to be paid by him for such land during the term of his exclusion shall be fixed by the Settlement-officer accordingly.

Excluded proprietors to have occupancy-rights in their sír-land.

63. The aggregate amount of any allowance under section sixty-one, and of the difference between the rent fixed under section sixty-two and the rent which the excluded proprietor would be liable to pay if he were a tenant-at-will, shall not be less than five or more than fifteen per cent. on the amount of the assessment offered to him by the Settlement-officer.

Aggregate amount of allowance granted to, and deduction from rent allowed to, excluded proprietor.

64. The Settlement-officer may make, on behalf of málik-makbúzás or other like holders of land, such a sub-settlement as shall secure to them from the málguzárs of the mahál their existing rights; and may provide that, in addition to the land-revenue payable by them, they shall pay to the málguzárs such percentage thereon, not exceeding twenty per cent., as may in his opinion be sufficient to compensate the said málguzárs for their responsibility in respect of the land-revenue, and to provide for the fees of lambardárs and mukaddams.

Sub-settlement with málik-makbúzás and other like holders of land.

65. The amount of revenue payable under a sub-settlement shall be a first charge upon all the land comprised in such sub-settlement.

Revenue payable under sub-settlement to be first charge on land.

66. When the whole of the land comprised in a mahál is held in severalty, the Settlement-officer shall apportion to the several holdings the amount with which such land is assessed under a settlement or sub-settlement.

Settlement-officer to apportion assessment over lands held in severalty;

When only part of the land comprised in a mahál is held in severalty, the Settlement-officer shall apportion such amount to the part held in common and the part held in severalty, and shall further apportion to the several holdings the amount to which they are liable under the former apportionment.

67. When by established custom the land held by each proprietor in any mahál is subject to periodical redistribution, the Settlement-officer may, in his discretion, on the application of the proprietors, make such redistribution according to such custom.

to redistribute land according to custom.

CHAPTER VI.

OF CERTAIN INVESTIGATIONS BY THE SETTLEMENT-OFFICER AND THE PREPARATION OF THE RECORD-OF-RIGHTS.

68. The Settlement-officer shall ascertain the persons who are in possession as proprietors of the land comprised in each mahál.

Settlement-officer to ascertain proprietors;

69. The Settlement-officer shall ascertain the situation and determine the extent of all the land held as sír in each mahál.

to determine extent of sír-land;

70. The Settlement-officer shall ascertain the customs or rules by which the proprietors in each mahál are mutually bound as to the granting of pattás, the ejectment of tenants, the realization and distribution of rents and other profits, the payment of land-revenue, village-expenses and other charges, and generally as to the control and management of the mahál; and shall decide all disputes and record all agreements regarding the matters mentioned in this section.

to decide disputes among shareholders regarding management of mahál;

71. The Settlement-officer shall determine through which of the lambardárs or sub-lambardárs the amount of revenue payable by each proprietor, sub-proprietor or málik-makbúzá shall be paid.

to determine through what lambardárs revenue shall be paid;

72. The Settlement-officer shall ascertain, and record for each mahál, the status of all tenants occupying land therein, the lands respectively held by them, the conditions on which they respectively hold such lands, and the rents (if any) payable by them respectively.

to ascertain status and rents of tenants.

73. The Settlement-officer shall investigate all claims against the Government to hold land free from revenue or at less than a full assessment, or to receive the whole or part of the land-revenue assessed on land which is not free from revenue.

The Chief Commissioner may, with the previous sanction of the Governor General in Council, make rules determining the principles by which the Settlement-officer shall be guided in the disposal of claims coming under this section.

Enquiry into claims to hold free from revenue as against Government.

Power of Chief Commissioner to make rules.

74. When any land not being land which any person is entitled to hold free from revenue as against the Government is held by a proprietor, whether himself a málguzár or not, who claims to hold it wholly or partially free from revenue as against the other málguzárs of the mahál, the Settlement-officer shall decide whether the claimant is entitled to be exempted from paying the whole or any part of the revenue which would otherwise be payable in respect of such land, and, if he decides that the claimant is so entitled, shall also determine the conditions under which, and the term for which, the claimant is entitled to such exemption:

Enquiry as to claims to hold free from revenue as against málguzárs.

Provided that no decision under this section shall exempt any land from the payment of revenue, when the mahál in which such land is comprised is sold for arrears of revenue.

The Chief Commissioner may make rules for the guidance of Settlement-officers in dealing with cases under this section.

Chief Commissioner may make rules for disposal of such cases.

75. When the Settlement-officer decides, under section seventy-three or section seventy-four, that land which has been held free from revenue, or at less than a full assessment, is

Time from which orders under sections 73 and 74 take effect.

liable to pay revenue, or to pay the same at enhanced rates, such decision shall take effect from the first day of the agricultural year next ensuing; unless the Chief Commissioner directs that the amount payable in respect of such land on account of the revenue accruing due within any one or more of the last preceding twelve years shall be realized.

Settlement-officer to decide what village-cesses are leviable;

76. The Settlement-officer shall determine and record the village-cesses, if any, which are leviable in accordance with village-custom, and the persons by and from whom, and the rates at which, they are leviable; and such cesses shall, if sanctioned by the Chief Commissioner, be leviable accordingly.

to determine certain disputes.

77. The Settlement-officer may determine disputes regarding any of the following matters (namely):—

(*a*) the right of any lambardár, mukaddam, patwárí, village-watchman or other village-servant to any customary dues, or other remuneration, and his liability to render any customary service in return for such dues or remuneration;

(*b*) the rights of persons resident in the village or holding lands comprised in the mahál, in or to the common land of the mahál and its produce, and the village-site;

(*c*) any customs relating to irrigation or to rights-of-way and other easements;

(*d*) any other rights and customs which the Chief Commissioner directs to be recorded in the administration-paper.

Procedure in cases under sections 68, 69, 70, 72 and 77, clauses (*b*), (*c*) and (*d*).

78. If a dispute arises regarding any matter mentioned or referred to in sections sixty-eight, sixty-nine, seventy, seventy-two and seventy-seven, clauses (*b*), (*c*) and (*d*), the Settlement-officer shall decide it summarily after making such enquiry as he thinks fit, and shall not be bound to hear any party to such dispute or to receive any evidence tendered by any such party; but in the case of every such dispute he shall record a proceeding stating the nature of such dispute, his decision thereon, the grounds of such decision and such other particulars as he thinks fit.

Record-of-rights.

79. The Settlement-officer shall prepare for every mahál, or, if he thinks fit, for any group of neighbouring mahals, a record-of-rights, and shall include in it—

(*a*) the results of the inquiries made under this chapter with regard to such mahál or group; and

(*b*) any other matters which the Chief Commissioner may, by rules in this behalf, direct to be entered in such paper.

Chief Commissioner may make rules regarding record-of-rights.

80. The Chief Commissioner may make rules prescribing the language in which the record-of-rights shall be drawn up, the form of the papers of which it shall consist, and the manner in which such papers shall be signed and attested by the Settlement-officer and the parties interested in the matters to which they refer.

Record-of-rights to be made over to Deputy Commissioner.

81. When the Settlement-officer has completed a record-of-rights in manner hereinbefore prescribed, he shall, subject to any order issued by the Chief Commissioner in this behalf, make it over to the Deputy Commissioner for custody.

Effect of entries in record-of-rights.

82. When the record-of-rights is duly made and attested, all entries therein shall be presumed to be correct until the contrary is shown.

Suits to contest certain settlement decisions or entries.

83. Any person deeming himself aggrieved by any decision under section seventy-eight, or by any decision of the Chief Settlement-officer in appeal therefrom, or by any entry made in the record-of-rights as to any matter referred to in that section, may institute a suit in the Civil Court to have such decision set aside or such entry cancelled or amended:

Provided as follows:—

When any suit under this section is instituted for the cancellation or amendment of an entry, the Government, if it so desires, and all persons interested in the entry, shall be made parties to the suit;

No persons by whom the record-of-rights was signed, and no persons claiming through or under them shall, without the previous sanction of the Chief Commissioner, institute any suit with a view to modify or set aside any entry relating to any matter mentioned in section seventy or section seventy-seven, clause (*b*), (*c*) or (*d*).

Revision of record-of-rights by Chief Commissioner.

84. After an assessment has been confirmed by the Governor General in Council, the Chief Commissioner shall not exercise in respect of any entry of the descriptions referred to in section eighty-three duly made in a record-of-rights prepared in connection with such assessment and duly attested, the power of revision conferred by sections twenty-five and thirty-one, unless it is proved that such entry was made inadvertently.

Proceedings regarding lands the property of Government.

85. In respect of lands declared to be the property of Government, the Settlement-officer shall, instead of proceeding as hereinbefore provided, conduct such operations, and prepare such record, as the Chief Commissioner may direct.

CHAPTER VII.

OF SETTLEMENTS MADE BEFORE THIS ACT COMES INTO FORCE.

Former settlements deemed to have been made under this Act.

86. Settlements made before this Act comes into force shall be deemed, so far as may be, to have been made hereunder; and the provisions of this Act in regard to proceedings taken and records prepared by Settlement-officers in the making of settlements hereunder shall apply in like manner to proceedings taken and records prepared before this Act comes into force.

Effect of awards of proprietary rights at such settlements.

87. When a Settlement-officer or Settlement Court has, at any settlement made before this Act comes into force, made an award of proprietary rights in any land, all claims which after consideration by such officer or Court may have been expressly decided by him or it to be invalid, or inferior to the claims of the persons in whose favour the award was made, shall be barred both as against Government and as against the persons last mentioned; and no suit shall lie for the enforcement of such claims in any Civil Court.

The award at any such settlement of proprietary rights in land to a widow shall be deemed to confer on her those rights only which, in accordance with the personal law to which she is subject, she would enjoy in land inherited by her from her husband.

When suits for proprietary rights will lie in Civil Courts.

88. Any person whose claim to proprietary rights in any land was not expressly decided by such officer or Court may sue in a Civil Court to establish such claim; and if he can prove that, when proprietary rights in such land were awarded by such officer or Court to other persons, he was entitled to interests therein of the same nature as those upon consideration of which the award was made, the Civil Court may declare him entitled to a proprietary right of such nature and extent in the land as it may deem just.

Chief Commissioner may allot waste-land to málik-makbúzás entitled thereto.

89. When at any settlement made before this Act comes into force málik-makbúzás have been declared entitled to a portion of the waste-lands comprised in any mahál, the Chief Commissioner may, notwithstanding anything contained in the record of such settlement, prescribe the extent of such portion and the mode in which the same shall be assigned to them; and may determine the nature and extent of their interests therein and the conditions on which they may hold it.

PART IV.

OF REVENUE-ADMINISTRATION.

CHAPTER VIII.

OF THE COLLECTION OF LAND-REVENUE.

Power of Chief Commissioner to regulate payment of land-revenue.

90. Notwithstanding anything contained in the record-of-rights of any village, the Chief Commissioner may fix the number and amount of the instalments, and the times, places and manner at and in which land-revenue, whether payable direct to the Government or not, shall be paid.

Until the Chief Commissioner otherwise directs, all such payments shall be made on the dates, in the instalments, in the manner and at the places on, in and at which they are payable when this Act comes into force.

"Arrear." "Defaulters."

91. When any sum payable under a settlement or sub-settlement is not paid within the time at which it is payable under section ninety, such sum shall be deemed to be an arrear; and all the persons with whom such settlement or sub-settlement was made, their representatives and assigns, shall thereupon become jointly and severally liable for it, and shall be deemed to be defaulters within the meaning of this Act.

Realization of Revenue from Málguzárs.

Tahsíldár's statement of account to be conclusive evidence of arrear.

92. A statement of account, authenticated by the signature of the Tahsíldár, shall, for the purposes of this chapter, be conclusive evidence of the existence of any arrear payable direct to the Government, of its amount, and of the persons who in respect thereof are defaulters.

Notice of demand.

93. The Deputy Commissioner or any officer empowered by him in this behalf may, if he thinks fit, before any of the processes hereinafter referred to are issued for the recovery of such an arrear, cause a notice of demand to be served on any of the defaulters.

Processes for recovery of arrears.

94. An arrear payable directly to Government may be recovered by any one or more of the following processes:—

(*a*) by arresting the defaulter and imprisoning him in the civil jail;

(*b*) by attaching and selling his moveable property;

(*c*) by attaching the mahál in respect of which the arrear has accrued or the share or land of any málguzár who has not paid the portion of the revenue which, as between him and the other málguzárs, is payable by him, and taking the same mahál, share or land under direct management;

(*d*) by transferring the share or land of any málguzár who has not paid such portion to any málguzár who has paid the same, or if every such málguzár declines to accept such share or land, to any person having a mortgage or charge upon the same, and who consents to accept it;

(*e*) by annulling the settlement of the mahál in respect of which the arrear has accrued, and taking such mahál under direct management or farming the same;

(*f*) by selling such mahál, or the share or land of any málguzár who has not paid the portion of the revenue aforesaid;

(*g*) by selling immoveable property belonging to the defaulter other than the land in respect of which the arrear has accrued:

Provided as follows:—

(1) the process mentioned in clause (*a*) shall not be issued against any female, minor, lunatic or idiot;

(2) the processes mentioned in clauses (*d*), (*e*), (*f*) and (*g*) shall not be enforced without the previous sanction of the Chief Commissioner;

(3) no land shall be sold, and the settlement of no land shall be annulled, on account of an arrear accruing in respect of land whilst it is under attachment, or under charge of the Superintendent of Government Wards, or held under direct management, or let in farm in accordance with any of the provisions of this Act.

The processes specified in clauses (*a*), (*b*) and (*g*) may be enforced either in the district in which the default has been made, or in any other district.

Arrest and imprisonment for recovery of arrear.

95. The process mentioned in section ninety-four, clause (*a*), may be executed by issuing a warrant directing the officer named therein, if the defaulter fails to pay the arrear by a date to be fixed in the warrant, to bring him to the tahsíl.

If, when the defaulter arrives at the tahsíl, the arrear is still unpaid, the Tahsíldár may order him to be taken before the Deputy Commissioner, or may keep him under personal restraint at the

tahsíl for a period not exceeding ten days, unless within such period the arrear is paid, and may then, if the arrear is still unpaid, cause him to be taken before the Deputy Commissioner.

Imprisonment of defaulter in civil jail.

96. If the arrear is not paid when the defaulter arrives before the Deputy Commissioner, the Deputy Commissioner may issue an order to the officer in charge of the civil jail of the district, directing him to confine the defaulter in such jail for such period, not exceeding three months from the date of the order, as the Deputy Commissioner may think fit, unless within such period the arrear is paid.

Procedure in sales of moveable property.

97. Attachments and sales of moveable property made under this chapter shall be conducted as nearly as may be according to the law for the time being in force for the attachment and sale of moveable property under the decree of a Civil Court.

Management of mahál, share or land attached under section 94 (*c*).

98. After causing any attachment to be made under section ninety-four, clause (*c*), the Deputy Commissioner shall issue a proclamation declaring the attachment to be in force, and shall take the attached mahál, share or land under his own management, or place it under the management of any agent whom he may appoint for the purpose.

Effect of attachment.

99. During the continuance of an attachment under section ninety-eight, the defaulters shall be excluded from possession of the land attached, and the Deputy Commissioner or the agent appointed by him shall have all their rights to manage the land and to realize the rents and profits arising therefrom, and shall be bound by all their liabilities as málguzárs or proprietors to any subordinate proprietors or tenants of such land.

Profits of land how applied.

100. The surplus profits of such land, after defraying the cost of attachment and management, shall be applied, first, to the payment of any revenue becoming due in respect of such land during the attachment; and next, to discharging the arrear for the recovery of which the attachment was made.

Attachment when to cease.

101. The attachment shall continue until the arrear is paid or realized from the profits of the land attached, or the Deputy Commissioner reinstates the defaulters in possession:

Provided that no attachment shall continue beyond five years from the first day of the agricultural year next following its commencement.

Transfer under section 94 (*d*).

102. When it is proposed to execute the process mentioned in section ninety-four, clause (*d*), the persons to whom the share or land in respect of which the arrear is due is to be transferred shall be required to pay such arrear, or to secure its payment to the satisfaction of the Deputy Commissioner.

No such transfer shall be made for a term exceeding fifteen years from the first day of the agricultural year next after the date on which it is sanctioned by the Chief Commissioner.

Joint and several liability not affected by transfer.

No proceedings taken under this section shall affect the joint and several liability of the málguzárs of the mahál for arrears accruing in respect of such mahál subsequently to the transfer of the share or land except that, as regards all such arrears, the transferee shall stand in the place of the málguzár whose share or land is transferred.

Procedure after receipt of sanction to annulment of settlement.

103. When the Chief Commissioner sanctions the annulment of the settlement of any mahál, the Deputy Commissioner shall proclaim such annulment, and may then exclude the defaulters from the possession of the mahál, and either manage the mahál or any portion thereof himself or through an agent, or let the mahál or any portion thereof in farm for such term and on such conditions as the Chief Commissioner directs:

Provided that no management or farm under this section shall continue for a longer period than fifteen years from the first day of the agricultural year next after the proclamation of annulment of settlement.

After the date of such proclamation no liabilities shall accrue under the settlement so annulled; but such annulment shall not affect anything done or any liability incurred under the settlement before such date.

Case of a portion of a mahál being managed or farmed.

104. When a portion only of the mahál is managed or let in farm under section one hundred and three, the rest of such mahál shall be separately resettled with the proprietors thereof for the remainder of the term of settlement.

Settlement on expiry of management or farm.

105. As soon as the management or farm of any mahál or portion thereof has come to an end, the Deputy Commissioner shall offer to the persons entitled under section forty-nine to an offer of assessment a new assessment of the land, on such conditions as the Chief Commissioner may direct, for the remainder of the term of the settlement of the mahál; and, if such offer is refused, may, with the previous sanction of the Chief Commissioner, let such mahál or portion in farm for the remainder of the term of settlement to some other person, or manage it himself or through an agent for such period.

Effect of annulment of settlement.

106. No leases, liens or other incumbrances created by the defaulters, or by any person through or under whom they claim, of, or upon any land managed or let in farm under this Act, shall, during such management or farm, be binding upon the Deputy Commissioner or Settlement-officer, his agent or lessee.

Saving of rights in sír-land.

107. No defaulter shall be deprived of the possession of his sír-land in the execution of any of the processes mentioned in section ninety-four, clauses (*c*), (*d*) and (*e*); but every such defaulter shall, while such process is being enforced, be entitled to retain possession of, and liable to pay rent for, such land as if he were an absolute occupancy-tenant, at such rent as may be fixed by the Deputy Commissioner.

Nature of estate taken by purchaser of land sold for arrears due thereon.

108. Unless the Chief Commissioner in sanctioning the sale otherwise directs, a purchaser of any land sold for arrears of revenue due in respect thereof acquires the full proprietorship or superior or inferior proprietorship of it, as the case may be, free of all leases, liens and other incumbrances; and all grants or contracts previously made by any person other than the purchaser in respect of such land shall become void as against such purchaser.

Nothing in this section shall—

(*a*) affect the rights of any proprietor superior or inferior to the defaulters or of any málik-makbúzá or occupancy-tenant who does not derive his rights as such proprietor, málik-makbúzá or tenant from express contract with such defaulters, or any person through whom they claim; or

(*b*) apply to lands held under leases at fair rents for the erection thereon of dwelling-houses, places of worship or manufactories, or for working mines, minerals, coals and quarries, or for laying out and maintaining gardens and burial-grounds, or for constructing tanks and canals, so long as the lands continue to be used for the purposes specified in such leases respectively; or

(*c*) deprive any defaulter whose property is sold of the rights in respect to his sír-land conferred by any law for the time being in force.

The Chief Commissioner may, from time to time, determine what rents shall be deemed to be fair rents within the meaning of this section.

Rules for sale of immoveable property.

109. When immoveable property is sold under this Act, the rules prescribed in sections 287, 288, 293 and 306 to 316, both inclusive, of the Code of Civil Procedure shall be followed, except in the following particulars (that is to say):—

(*a*) 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 on such payment the sale shall be stayed.

(*b*) The proclamation directed by the said section 287 shall, when the sale is under clause (*f*), section ninety-four of this Act, declare that, subject to the provisions of section one hundred and eight, the full proprietorship, or superior or inferior proprietorship, as the case may be, is to be sold free from all leases, liens and other incumbrances, and the certificate mentioned in section 316 of the said Code shall contain a similar statement.

(*c*) The last two clauses of the said section 287 shall not apply.

(*d*) An appeal from any order under section 312 of the said Code for confirming or setting aside the sale shall lie to the Commissioner of the Division, and an appeal from the Commissioner's order on such appeal shall lie to the Chief Commissioner.

(*e*) The Deputy Commissioner may, from time to time, postpone any sale which he has proclaimed, reporting such postponement to the Commissioner of the Division.

(*f*) Section 309 of the said Code shall be read as if, after the words "for such payment," the words "and every sale of such property made after a postponement" were added.

(*g*) Section 313 of the said Code shall not apply to sales under section ninety-four, clause (*f*), of this Act.

(*h*) Section 316 of the said Code shall be read as if the words "The Deputy Commissioner shall place the purchaser in possession of the lands which he has purchased" were added thereto.

Pre-emption at sales.

110. In the course of a sale under section ninety-four, clause (*f*), if the property is knocked down to a stranger, the following persons may claim to take it at the sum last bid in the following order:—

(*a*) any málguzár who has paid the revenue which as between him and the other málguzárs is payable by him;

(*b*) if the superior proprietorship is sold, the inferior proprietor;

(*c*) if the inferior proprietorship is sold, the superior proprietor:

Provided that such claim is made before the officer conducting the sale closes the sitting at which the sale is held, and that the claimant undertakes to fulfil all the conditions of the sale binding on the purchaser.

Application of proceeds of sale of immoveable property.

111. The proceeds of every sale in execution of any process mentioned in section ninety-four shall be applied, first, in satisfaction of the arrear on account of which the sale was held and of the expenses of such sale; secondly, to the payment of any other arrear due to Government by the defaulter; and the surplus, if any, shall then be payable to him, or, where there are more defaulters than one, to such defaulters according to their respective shares in the property sold.

Costs recoverable as part of arrear.

112. The costs of serving a notice of demand under section ninety-three and of enforcing any process mentioned in section ninety-four shall be recoverable as part of the arrear in respect of which the notice was served and the process was issued.

Matters as to which Chief Commissioner may make rules.

113. The Chief Commissioner may make rules—

(*a*) for the guidance of Revenue-officers in issuing notices of demand under section ninety-three and executing the processes mentioned in section ninety-four;

(*b*) defining the classes of officers by whom the processes mentioned in section ninety-four, clauses (*a*) and (*b*), may be enforced;

(*c*) prescribing the agency by which any of the processes issued under section ninety-four shall be executed.

Remedies open to person denying that sum demanded as an arrear is due.

114. Notwithstanding anything contained in section ninety-two, when proceedings are taken under this Act for the recovery of an arrear, the person against whom such proceedings are taken may, if he denies that the arrear or any part thereof is due,

pay the same under protest made at the time of payment and duly signed by him or by his agent, and institute a suit in the Civil Court for the recovery of the amount which he denies to be due.

Realization of Revenue by Málguzárs.

Limitation of right to set-off, &c., in suit for arrears.

115. In a suit for the recovery of an arrear of revenue not being revenue payable directly to Government, and in a suit brought by a lambardár to recover the amount of any revenue payable to Government through him, the defendant shall not, except with the permission of the Court,—

(*a*) set-off against the plaintiff's demand any sum of money recoverable by him from the plaintiff; or

(*b*) claim credit for any payment purporting to have been made on account when such payment was made before the date on which the amount thereof became due.

Recovery of arrear through Deputy Commissioner instead of by suit.

116. Any lambardár or sub-lambardár entitled to recover an arrear, or any málguzár to whom such an arrear is due under a sub-settlement, may, before instituting a suit for the recovery thereof, apply to the Deputy Commissioner to recover such arrear on his behalf as if it were an arrear of revenue payable directly to Government.

The Deputy Commissioner may, if he thinks fit, comply with such application, but shall, before compliance therewith, give to the persons who would be defendants if a suit were instituted for the recovery of such arrear, opportunity to show cause against the order which he proposes to make.

The Deputy Commissioner shall not be made a defendant to any suit instituted under section one hundred and fourteen in respect of an arrear as to which an order has been made under this section.

No person on whose account the Deputy Commissioner proceeds under this section to recover an arrear shall thereby be relieved of his responsibility for such arrear.

Saving of right of málguzár to demand revenue of land assessed to revenue and held free.

117. Nothing in the Indian Limitation Act, 1877, and no agreement made after this Act comes into force, shall bar the right of the málguzárs of any mahál assessed with land-revenue to demand revenue in respect of any land which, having been taken into account in such assessment, has been held by any person without payment of revenue.

The Chief Commissioner may, in his discretion, exempt any case from the operation of this section.

Limitation in suits for revenue.

118. No suit for the recovery of revenue payable under a settlement or sub-settlement shall be instituted after three years reckoned from the date on which such revenue becomes payable.

In other respects the limitation of such suits shall be governed by the Indian Limitation Act, 1877.

Interest on Arrears.

Interest on arrears.

119. Interest shall not be charged on an arrear of revenue unless the Chief Commissioner, by general or special order, so directs; provided that the Court may award interest at such rate as it thinks fit on sums payable under a sub-settlement.

CHAPTER IX.

OF REVENUE AND VILLAGE RECORDS.

Correction of record-of-rights.

120. Any entry in the record-of-rights may, after such record has been made over to the Deputy Commissioner, be corrected by the Deputy Commissioner on the application of any person interested, or of his own motion. Such correction may be made on one or more of the following grounds and on no others:—

(*a*) that all persons interested in such entry wish to have it corrected; or

(*b*) that by a decree in a suit brought under section eighty-three it has been declared to be erroneous; or

(*c*) that, being founded on a decree or order of a Civil Court, or on the order of a Revenue or Settlement officer, it is not in accordance with such decree or order; or

(*d*) that, being founded on such decree or order, the order or decision has subsequently been modified on appeal or review, or has been revised by the Chief Commissioner.

Revision of record in accordance with provision therein contained.

121. The Deputy Commissioner may revise a record-of-rights when such revision is provided for in such record.

Powers of Deputy Commissioner as to correction of entry or revision of record.

122. When the Deputy Commissioner takes proceedings for the correction of any entry in the record-of-rights or for the revision of such record-of-rights, he shall exercise, for the purpose of such correction or revision, all the powers which the Chief Settlement-officer might have exercised if the proceedings had been taken whilst the settlement was in progress.

Power to direct that rule or custom entered in record-of-rights shall be enforced by Government.

123. The Chief Commissioner may, in his discretion, by notification in the official Gazette, direct that any specified rule, custom or condition duly entered in the record-of-rights of any specified village shall be enforced by the Government.

Punishment of violation of such rule or custom.

If any of the persons with whom a settlement or sub-settlement has been made, violate or neglect any rule, custom or condition with respect to which the Chief Commissioner has made a direction under this section, the Deputy Commissioner may, if no penalty is provided by any law for the time being in force for such violation or neglect, recover from such person a penalty not exceeding two hundred rupees.

Suit to set aside proceedings under section 123.

124. Any person against whom proceedings have been taken under section one hundred and twenty-three may institute a suit against Government to set aside such proceedings on the ground that no rule, custom or condition was, in fact, violated or neglected. If the Court finds that no rule, custom or condition has been violated or neglected, it may by its order annul such proceedings, and direct that any penalty paid by the plaintiff be refunded; and may also award to him such costs as he has necessarily incurred in the proceedings, and such further sum as compensation as it thinks fit.

Powers of Chief Commissioner as to registration of changes after preparation of record-of-rights.

125. The Chief Commissioner may—

(*a*) direct that the mukaddam of each village shall, for the purpose of showing the changes occurring therein subsequently to the preparation of the record-of-rights, prepare, or, where there is a patwárí, cause to be prepared, and furnish, annually for such village, papers in such form, at such time, containing such particulars, and attested in such manner, as the Chief Commissioner may, from time to time, prescribe;

(*b*) lay down the procedure to be followed in order to ascertain that a change has occurred in the village, and the nature of such change.

All changes referred to in this section shall be recorded in such registers as the Chief Commissioner appoints, and not in the record-of-rights, and the Chief Commissioner may direct that, before any specified changes are recorded, the order of a specified Revenue-officer shall be obtained in this behalf.

Possession of proprietary rights to be notified.

126. All persons lawfully entering into possession of proprietary rights and interests in any land shall, within a reasonable time, give notice of such entry to the Tahsíldár of the tahsíl in which such land is situated.

If any question arises whether any right or interest is a proprietary right or interest within the meaning of this section, the decision thereof by the Chief Commissioner shall be final.

Notice to be given by guardian in case of minority or idiotcy.

If the person so entering is a minor, lunatic or idiot, the guardian or other person who has charge of his property shall give the notice required by this section.

Fine for neglect to give notice of possession.

127. Any person neglecting to give the notice required by section one hundred and twenty-six shall be liable, at the discretion of the Deputy Commissioner or Assistant Commissioner, to fine which may extend to fifty rupees for each day during which such neglect continues.

Obligation to aid in preparation of village-papers.

128. All persons being in possession of proprietary rights in land shall, on being so required by the Deputy Commissioner, prepare, or cause to be prepared, such papers, and furnish such information, as may be required for the preparation of the village-papers prescribed under section one hundred and twenty-five.

Fees for recording changes;

129. The Chief Commissioner may direct that fees shall be leviable when changes are recorded under the last clause of section one hundred and twenty-five, and may fix the amount of such fees.

from whom leviable.

All fees so leviable shall be levied from the person in whose favour the change is made.

Annual enquiry regarding land held free from revenue.

130. The Deputy Commissioner shall in each year make enquiry regarding all cases in which land has been granted by Government, conditionally or for a time, free, wholly or in part, from the payment of revenue.

Procedure on breach of conditions of grant.

If it appears to the Deputy Commissioner that the conditions of any grant have been broken by the grantee, he shall report the case through the Commissioner of the Division for the orders of the Chief Commissioner, who may direct that the land be assessed, or may pass such other order as he thinks fit.

Procedure on expiry of term of grant.

If it appears to the Deputy Commissioner that the term of any such grant has expired, or (when the grant is for a life or lives) if the person last entitled to hold the land comprised in the grant, free from revenue, or at less than full revenue-rates, has died, he shall assess the same, and shall report his proceedings through the Commissioner of the Division for the sanction of the Chief Commissioner.

Inspection of revenue-records.

131. All records kept under this Act shall be open to public inspection at such times, and on such conditions as to fees or otherwise, as the Chief Commissioner from time to time directs.

CHAPTER X.

OF CERTAIN ADDITIONAL POWERS AND FUNCTIONS OF REVENUE-OFFICERS.

Purposes for which, when settlement is not in progress, Deputy Commissioner shall exercise Settlement-officers' powers.

132. The Deputy Commissioner shall, when a settlement is not in progress, exercise the powers conferred by this Act on Settlement-officers for the following purposes:—

(*a*) causing boundary-marks to be erected or repaired, and recovering the cost of such erection and repair;

(*b*) assessing land-revenue on lands which are liable to assessment, but have not been assessed;

(*c*) declaring any local area to be a mahál;

(*d*) settling lands from which the proprietors were excluded at settlement and to which they have been or are about to be readmitted;

(*e*) settling mahals in respect of which an application has been made under the third proviso to section fifty-six;

(*f*) dealing with claims to hold land wholly or partially free from revenue as against the málguzárs;

(*g*) assessing lands gained by alluvion;

(*h*) ascertaining and recording village-cesses which are levied when this Act comes into force, but have not been recorded at the settlement.

Purposes for which officers may be invested with Settlement-officers' powers.

133. The Chief Commissioner may, during the currency of a settlement, invest any officer with the powers conferred on a Settlement-officer by sections forty, forty-one and forty-two; or,

with the sanction of the Governor General in Council, with any other of the powers which are by this Act conferred on a Settlement-officer; but not so as to enable him to enhance the amount of an assessment in force under section fifty-six.

Cognizance of, and penalty for, offence of injuring boundary-marks.

134. Any person wilfully erasing, removing or damaging a boundary-mark may be ordered by the Deputy Commissioner or by a Tahsíldár or Náib Tahsíldár empowered by the Chief Commissioner in this behalf to pay to the officer making the order, in addition to any fine to which such person would be liable under section 434 of the Indian Penal Code, such sum, not exceeding fifty rupees, as may in the opinion of such officer be necessary to defray the expense of restoring the same, and of rewarding the person (if any) who gave information of such erasure, removal or damage.

Procedure when person injuring cannot be found.

135. Whenever the person erasing, removing or damaging such mark cannot be discovered, or if for any other reason it is found impracticable to recover from him the sum which he has been ordered to pay, the mark shall be re-erected or repaired at the cost of the proprietors, mortgagees or farmers of such one or more of the adjoining lands as the Deputy Commissioner thinks fit.

Partition of a mahál into two maháls.

136. Any málguzárs of a mahál who are not co-sharers with the other málguzárs of such mahál in any lands comprised in such mahál, except such lands as are under the law relating to partition for the time being in force indivisible, may apply to the Deputy Commissioner to make the lands held by them separately from such other málguzárs a separate mahál; and the Deputy Commissioner shall thereupon make such lands and the lands held separately by the remaining málguzárs separate maháls, and shall, with the previous sanction of the Commissioner, apportion between the two new maháls thus constituted the entire revenue assessed upon the original mahál.

CHAPTER XI.

VILLAGE-OFFICERS AND PATWÁRIS.

Power to make rules as to officers.

137. The Chief Commissioner may make rules regulating the appointment, remuneration, suspension and removal of lambardárs, sub-lambardárs and mukaddams:

Provided that, except with the previous sanction of the Governor General in Council, proprietors, other than málik-makbúzás, shall not be liable to pay, on account of the aggregate remuneration of lambardárs or sub-lambardárs and mukaddams, a sum exceeding five per cent. on the land-revenue which is assessed on their land, or which, when their land is free from revenue, would, in the judgment of the Deputy Commissioner, be assessed on their land if it were subject to assessment.

In framing rules for the appointment under this section of lambardárs and sub-lambardárs for any mahál, the Chief Commissioner shall have regard among other matters to local custom and hereditary claims, and to entries on the subject in the record-of-rights of such mahál.

In every village in which there are resident málguzárs, one of such málguzárs shall be the mukaddam.

Duties of lambardárs.

138. It shall be the duty of every lambardár and sub-lambardár—

(*a*) to collect and pay into the Government Treasury so much of the land-revenue as may under section seventy-one be payable through him, either solely or jointly with other lambardárs or sub-lambardárs;

(*b*) to collect and pay to the mukaddam, or into the Government Treasury, as the Deputy Commissioner may direct, all sums of money payable through him, either solely or jointly with other lambardárs or sub-lambardárs, by the proprietors whom he represents, on account of the remuneration of the mukaddam, patwáris or village-watchmen, or on account of any expenses which the mukaddam is authorized to recover from the lambardárs or sub-lambardárs of his village;

(*c*) to assist the mukaddam in obtaining all particulars which he is bound to enter in the annual village-papers, or to report under this Act.

Lambardárs may recover fees and other charges from proprietors.

139. Together with the land-revenue, lambardárs and sub-lambardárs may recover from the proprietors whom they respectively represent—

(*a*) **any remuneration to which they are entitled as such; and**

(*b*) the sum which, under section one hundred and thirty-eight, they are bound to pay to mukaddams:

Provided that no such recovery shall be made from málik-makbúzás paying a percentage which includes remuneration to mukaddams and lambardárs.

Deputy Commissioner may alter channel through which málik-makbúzá pays revenue.

140. On the application of any málik-makbúzá or other like holder of land, or of the lambardár or sub-lambardár through whom such málik-makbúzá or other holder of land pays the revenue assessed on his holding, the Deputy Commissioner may, for sufficient cause shown, order that such revenue be paid through any other lambardár or sub-lambardár, or that it be paid into the Government Treasury.

Effect of order for payment of revenue direct to Government.

When the Deputy Commissioner orders such payment to be made into the Government Treasury, such portion of the percentage fixed under section sixty-four as the Deputy Commissioner, subject to the control of the Chief Commissioner, may determine, shall be so paid, and the málik-makbúzá or other person shall pay the rest to the mukaddams on account of their fees and the other village-expenses.

Duties of mukaddams.

141. It shall be the duty of every mukaddam—

(*a*) to control and superintend the village-patwári and village-watchmen; to report their deaths or absence from duty; to maintain them in the possession of any lands appertaining to their office; to recover and pay to them any cash allowances to which they may be entitled; and to take such steps as may be necessary to compel them to perform their duties;

(*b*) to furnish reports regarding the state of his village, at such places and times as the Deputy Commissioner fixes in this behalf;

(*c*) to report and, if possible, to prevent encroachments on the public paths and roadways in his village;

(*d*) to preserve such stations and marks erected in his village by Government-surveyors as may be made over to his care;

(*e*) subject to any rules issued by the Chief Commissioner, to keep his village in good sanitary condition;

(*f*) to report violations of any rules which the Chief Commissioner may make for the preservation of underwood, forests and trees growing on the village-lands, and for securing to persons entitled to cut wood and enjoy other privileges in the waste-lands of the village the rights to which they are entitled;

(*g*) to collect, or aid in the collection of, all payments due to Government in his village;

(*h*) to report all births and deaths taking place in his village.

The Chief Commissioner may make rules—

(1) adding to the list of duties which a mukaddam is required to perform under this section; and

(2) regulating the liability of persons residing in any village for charges necessarily incurred by mukaddams in the performance of the duties specified in clause (*e*) in respect of such village, and for apportioning such charges among such persons; and

(3) determining the officers to whom reports under this section shall be made.

Liabilities imposed by law on landholders to attach to mukaddams.

142. When, by any enactment for the time being in force, any public duties are imposed on, or public liabilities are declared to attach to, landholders, their managers and agents and the like, such duties shall be deemed to be imposed on, and such liabilities shall be held to attach to, mukaddams appointed under this Act:

Provided that nothing herein contained shall discharge landholders, their managers or agents, or the like, from any liabilities imposed upon them by law.

Power of mukaddams to recover certain expenses incurred.

143. Every mukaddam may recover from the lambardárs or sub-lambardárs of the village to which he is appointed his own remuneration, together with any expenses necessarily incurred in the performance of his duties.

Chief Commissioner may make rules as to patwáris.

144. The Chief Commissioner may make rules—

(*a*) regulating the manner in which patwáris are to be selected; prescribing the conditions under which they may be appointed; and fixing the limits of their circles and the nature, mode and amount of their remuneration;

(*b*) prescribing the conditions under which substitutes may be appointed for persons having hereditary claims to the office of patwári, when such persons are unable to act;

(*c*) prescribing the fines which may be imposed on patwáris and their substitutes for neglect of their duty, and stating the circumstances under which they may be suspended or removed:

Provided that, except with the previous sanction of the Governor General in Council, no proprietor shall be compelled to pay as remuneration to patwáris a sum exceeding six per cent. on the revenue for the time being assessed on his land, or which, when his land is free from revenue, would, in the judgment of the Deputy Commissioner, be assessable on his land if it were liable to assessment.

Chief Commissioner may make rules for guidance of Deputy Commissioners in certain matters.

145. The Chief Commissioner may make rules for the guidance of Deputy Commissioners in dealing with cases where, at the time of making the settlement next before this Act comes into force, the maintenance of a patwári was made optional, and the persons settled with are unable to agree as to whether a patwári should be maintained, and for dealing with cases where no patwári is, under such option, maintained and the mukaddams or proprietors have made default in the performance of the duties of a patwári.

Such rules may empower the Deputy Commissioner, in the latter class of cases—

(*a*) to impose fines not exceeding fifty rupees on such mukaddams or proprietors, and therefrom to make provision for the temporary performance of the duties in respect of which they have made default;

(*b*) to appoint patwáris in the villages of such proprietors, either for the term of the settlement or for any shorter term, and to fix the remuneration of such patwáris.

Nothing in the proviso to section one hundred and forty-four shall apply to patwáris so appointed.

Chief Commissioner may define duties of patwáris.

146. The Chief Commissioner may make rules prescribing the duties of patwáris—

(*a*) towards the Government; and may in such rules determine the registers, returns or other papers which they shall keep or furnish, the forms and language in which such registers and returns are to be prepared, the mode of their preparation and attestation, and the dates on which they are to be furnished;

(*b*) towards the members of the village-community; and may in such rules fix the remuneration, if any, other than the fixed emoluments of their office, which the patwáris may demand in respect of the performance of such duties.

Patwáris' papers to be public documents.

All records and papers which patwáris are required to prepare or keep by any rule made by the Chief Commissioner under this section shall be deemed to be public documents within the meaning of the Indian Evidence Act, 1872, and to be the property of Government.

Patwáris to produce papers for inspection, and to allow copies to be made.

147. Patwáris shall produce at all reasonable times, for the inspection of all persons interested therein, all records and papers which they are so required to prepare or keep, and shall allow such persons to make copies of such records and papers.

148. All existing lambardárs, sub-lambardárs, mukaddams and patwáris shall, unless the Chief Commissioner in any specified case otherwise directs, be deemed to have been appointed under this Act.

Existing officers confirmed.

149. Any sums which lambardárs, sub-lambardárs, mukaddams and patwáris are entitled to recover or demand under this chapter may, if the Deputy Commissioner so directs, be recovered in the same manner as an arrear of revenue payable directly to the Government.

Lambardárs' and other officers' dues recoverable as arrears.

150. In each village of the district of Sambalpúr all persons holding sír-land, other than mukaddams, are bound to provide for the due remuneration of the mukaddam of the village; and the Chief Commissioner may make rules for the enforcement of this obligation.

Holders of sír-land in Sambalpúr to provide for remuneration of mukaddams.

PART V.

CHAPTER XII.

MISCELLANEOUS.

151. Unless it is otherwise expressly provided in the records of a settlement or by the terms of a grant made by the Government, the right to all mines, minerals, coals and quarries, and to all fisheries in navigable rivers, and the right to extract sap from all palmyra and cocoanut trees, shall be deemed to belong to Government; and the Government shall have all powers necessary for the proper enjoyment of such rights:

Right to mines and quarries.

Provided that, whenever in the exercise by the Government of the rights herein referred to over any land, the rights of any persons are infringed by the occupation or disturbance of the surface of such land, the Government shall pay to such persons compensation for such infringement, and the amount of such compensation shall be determined as nearly as may be in accordance with the provisions of the Land Acquisition Act, 1870.

152. Except as otherwise hereinbefore provided,—

Exclusive jurisdiction of Revenue-authorities.

(*a*) no Civil Court shall entertain any suit instituted, or application made, to obtain a decision or order on any matter which the Governor General in Council, the Chief Commissioner or a Revenue or Settlement officer is, by this Act, empowered to determine or dispose of; and in particular

Matters excepted from jurisdiction of Civil Courts.

(*b*) no Civil Court shall exercise jurisdiction over any of the following matters:—

(1) any matters provided for in sections forty, forty-one, forty-two and eighty-nine, as to waste-lands:

(2) the claim of any person to have an assessment offered to, or sub-settlement made with, him:

(3) the amount of revenue or rate to be assessed on any mahál, share or portion of a mahál under this or any other Act for the time being in force:

(4) questions as to the validity of any engagement with Government for the payment of land-revenue, or of any agreement entered into by superior or inferior proprietors in a settlement or sub-settlement:

(5) claims connected with or arising out of any process enforced on account of refusal to accept the assessment offered in a settlement or sub-settlement by the Settlement-officer or Deputy Commissioner:

(6) the amount of the allowance or rent fixed under section sixty-one or sixty-two:

(7) the redistribution according to established custom, by a Settlement-officer, of land comprised in a mahál:

(8) the formation of the record-of-rights,

the preparation, signing or attestation of any of the documents contained therein, or

the notification of settlement:

(9) any matters provided for or referred to in section seventy-three, seventy-four or one hundred and thirty as to lands held or claimed to be held free from revenue, except rights arising under any contract between the Government of India and grantees of land:

(10) claims connected with, or arising out of, the collection of revenue, or any process enforced on account of an arrear of revenue, or on account of any sum which is under this or any other Act realizable as revenue:

(11) claims to set aside, on any ground other than fraud, sales for arrears of revenue:

(12) corrections of entries or revisions of records under sections one hundred and twenty, one hundred and twenty-one and one hundred and twenty-two:

(13) claims to have a partition and apportionment made under section one hundred and thirty-six, and questions as to the distribution or apportionment under that section of the land or of the revenue of a mahál:

(14) claims to the office of patwári, lambardár, sub-lambardár or mukaddam, or in respect of any injury caused by exclusion therefrom, or to compel the performance of the duties thereof:

(15) claims to compel the performance of any duties imposed by this Act on any Revenue or Settlement officer.

In all the above cases jurisdiction shall rest with the Revenue-authorities only.

153. No suit shall lie in any Civil or Revenue Court for the recovery of any village-cess which has not been sanctioned by the Chief Commissioner and also either recorded at a settlement or under section one hundred and thirty-two, clause (*h*).

For what village-cesses suit lies.

154. Whenever, at any settlement made before this Act comes into force, waste-lands have been demarcated as the property of Government, no claim of any person to, or in respect of, such lands shall be entertained by any Civil Court after the expiration of three years from the date of such demarcation.

Limitation of claims for compensation in case of waste-land demarcated as property of Government.

155. No Revenue or Settlement officer, and no person employed in any Revenue or Settlement office, shall, except with the express permission of the Chief Commissioner,—

Restriction on Revenue and Settlement officers trading and holding land.

(*a*) engage in trade, or be in any way concerned, directly or indirectly, in any commercial transaction, or in the purchase or hiring of land, in the district to which he is appointed, or in which he is employed;

(*b*) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property which may be sold by order of any Revenue-authority in such district.

The Chief Commissioner may delegate to Commissioners of Divisions or to Deputy Commissioners the power of granting the permission mentioned in this section in the case of any specified class of officers.

Nothing in this section shall be deemed to preclude any person from becoming a member of a company incorporated under the Indian Companies Act, 1866.

156. When any mahál is managed or let in farm under section fifty-seven or fifty-eight, or when either of the proclamations mentioned in sections ninety-eight and one hundred and three has been made, all sums due to the proprietor in respect of the mahál, share or land mentioned in any of the said sections shall be payable only to the Deputy Commissioner or Settlement-officer, his agent or lessee; and no payment made to such proprietor in anticipation of the usual period for such payment shall, without the sanction of the Deputy Commissioner or Settlement-officer, be credited to the person making the same in account with the Deputy Commissioner or Settlement-officer, his agent or lessee.

When mahál managed or farmed, or upon proclamation under section 98 or 103, rent payable to Deputy Commissioner.

Payment to proprietor in anticipation of due date.

157. When any land has been let in farm under the provisions of this Act, any revenue due from the farmer in respect of such land may be recovered from him or his surety as an arrear of revenue payable directly to Government.

Recovery of balances due by farmers.

158. All land-revenue due when this Act comes into force, and all penalties or other moneys payable to, or recoverable by, an officer of Government under this Act, shall be recovered from the persons from whom they are due and from the sureties (if any) of such persons as if such land-revenue, penalties or moneys were an arrear of revenue payable directly to Government due under this Act by such persons and their sureties.

Recovery of revenue due when Act comes into force;

and of money payable under Act.

159. All proceedings taken before this Act comes into force for the collection of the land-revenue or the realization of arrears thereof shall be deemed to have been taken in accordance with law.

Past proceedings for collection of revenue legalized.

160. In conferring powers under this Act the Chief Commissioner may empower persons by name or classes of officials generally by their official titles.

Chief Commissioner may empower persons by name, or confer powers on classes.

161. The Chief Commissioner may vary or cancel any order conferring powers under this Act.

Chief Commissioner may vary or cancel orders.

162. The Chief Commissioner may, with the previous sanction of the Governor General in Council, make rules consistent with this Act for carrying out its provisions, and may attach to the breach of any such rule, or of any other rule made by him under this Act, a penalty which may extend to two hundred rupees, or, when such breach is a continuing breach, to fifty rupees for each day during which such breach continues.

Chief Commissioner may make rules and attach penalty to breach thereof.

All powers to make rules conferred by this Act on the Chief Commissioner shall be exercised subject to the control of the Governor General in Council, and may be exercised from time to time as occasion requires.

No rule made by the Chief Commissioner under this Act shall take effect until it has been published in the local official Gazette.

All such rules, when so published, shall have the force of law.

SCHEDULE.

(*See section 2.*)

ENACTMENTS REPEALED.

Number and year.	Title.	Extent of repeal.
Act XII of 1841.	For amending the Bengal Code in regard to sales of land for arrears of revenue.	So much as has not been repealed.
Act I of 1847	For the establishment and maintenance of boundary-marks in the North-Western Provinces of Bengal.	The whole.
Act XXXI of 1858.	To make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal.	The whole.

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PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 8th June, 1881, and is hereby promulgated for general information:—

ACT No. XVIII OF 1881.

THE CENTRAL PROVINCES LAND-REVENUE ACT, 1881.

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119. Interest on arrears.

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SCHEDULE—ENACTMENTS REPEALED.

An Act to consolidate and amend the law relating to Land-revenue and the powers of Revenue-officers in the Central Provinces.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Land-revenue and to the powers of Revenue-officers in the Central Provinces; It is hereby enacted as follows:—

PART I.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Central Provinces Land-revenue Act, 1881":

Local extent.

It extends to all the territories for the time being under the administration of the Chief Commissioner of the Central Provinces, except those specified in Part VI of the first schedule of the Scheduled Districts Act, 1874:

Commencement.

And it shall come into force on such day as the Chief Commissioner, with the previous sanction of the Governor General in Council, may direct by notification in the local official Gazette.

Enactments repealed.

2. On and from such day the enactments mentioned in the schedule hereto annexed, so far as they relate to the territories to which this Act extends, and all other rules, regulations and enactments relating to the settlement and collection of the land-revenue in such territories, shall be repealed.

Pending proceedings.

3. All proceedings relating to matters dealt with by this Act and, when this Act comes into force, pending before officers by whom they would be cognizable under this Act, shall be deemed, so far as may be, to have been commenced hereunder.

Interpretation-clause.

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

"Assistant Commissioner":

(1) "Assistant Commissioner" includes also "Extra Assistant Commissioner":

"Legal Practitioner":

(2) "Legal Practitioner" means an advocate, vakíl or attorney of any High Court, a pleader, mukhtár or revenue-agent:

"Village-cess":

(3) "Village-cess" means any cess which a person resident or holding lands in a village pays or renders to the proprietors as such of the village, and includes service rendered or things furnished as well as money paid:

"Recognized agent":

(4) "Recognized agent" means a person authorized in writing by any party to a proceeding under this Act to make appearances and applications and to do other acts on his behalf in such proceeding and also belonging to any class which the Chief Commissioner may, from time to time, by notification in the official Gazette, declare in this behalf:

"Agricultural year":

(5) "Agricultural year" means the year commencing on the first day of June, or on such other date as the Chief Commissioner may, in the case of any specified District or Districts, from time to time, appoint:

"Sír-land":

(6) "Sír-land" means (*a*) land recorded as "sír" in the papers of the last preceding settlement of the local area in which such land is situate; and (*b*) land not so recorded, but which has been cultivated by the proprietor or one of the proprietors thereof for a period of not less than twelve consecutive years; and (*c*) waste land which has been broken up by the proprietor or one of the proprietors thereof and cultivated by him for a period of not less than six consecutive years; and (*d*) in Sambalpúr, includes also "bhogra" land.

Explanation.—Land which has, after the date of such settlement, or the expiry of such period of twelve years, or six years (as the case may be), been for a period of six consecutive years unoccupied by such proprietor is not sír-land. Land is not unoccupied by the proprietor when it is leased out by him with an express reservation of his sír-rights:

"Mahál":

(7) "Mahál" means any local area held under a separate engagement for the payment of the land-revenue direct to Government, and includes also any local area declared, under the provisions of this Act, to be a mahál:

"Village":

(8) "Village" includes any tract of land which, at the last settlement of such land, has been recognized as a village, or which the Chief Commissioner may, from time to time, declare to be a village for the purposes of this Act:

"Málguzár":

(9) "Málguzár" means a person who, under the provisions of this Act, has accepted, or is to be deemed to have accepted, the assessment of a mahál, and includes his representatives and assigns; and also any person with whom a settlement has been made before this Act comes into force, and his representatives and assigns:

"Málik-makbúzá":

(10) "Málik-makbúzá" means any person owning one or more plots of land assessed with revenue in a mahál; but it does not include a málguzár or inferior proprietor:

"Lambardár":

(11) "Lambardár" means a person appointed in manner prescribed by this Act to represent the proprietary body of a mahál in its relations with the Government:

"Sub-lambardár":

(12) "Sub-lambardár" means a person so appointed to represent the inferior proprietary body of a mahál in its relations with the superior proprietors:

"Mukaddam":

(13) "Mukaddam" means the executive headman of a village, appointed in manner prescribed by this Act:

"Tenant":

(14) "Tenant" means a person who holds land of another person, and is, or but for a special contract would be, liable to pay rent for such land to such other person; but it does not include a farmer, mortgagee or thekadár of proprietary rights.

Explanation.—An inferior proprietor is not, as such, a tenant:

"Rent":

(15) "Rent" means whatever is paid, delivered or rendered, in money, kind or service, by a tenant on account of the use or occupation of land let to him:

"Absolute occupancy-tenant":

(16) "Absolute occupancy-tenant" means, in reference to any land, a tenant who, at a settlement of such land made before this Act comes into force, or after such a settlement but before this Act comes into force, was recorded, by order of a Revenue or Settlement officer, in respect of such land, as an "absolute occupancy-raiyat," or in terms equivalent thereto:

"Record-of-rights":

(17) "Record-of-rights" includes the supplementary administration-paper prepared at or after the time of making a settlement before this Act comes into force.

PART II.

CHAPTER II.

OF REVENUE-OFFICERS: THEIR POWERS AND PROCEDURE.

Chief Controlling Revenue-authority.

5. The Chief Commissioner shall, subject to the control of the Governor General in Council, be the Chief Controlling Revenue-authority.

Revenue-officers.

6. Besides the Chief Commissioner, there shall be the following classes of Revenue-officers (namely):—

(*a*) Commissioners, who, subject to the control of the Chief Commissioner, shall be the Chief Revenue-authorities within their respective divisions:

(*b*) Deputy Commissioners, who, subject to the control of the Commissioner, shall be the Chief Revenue-authorities within their respective districts:

(*c*) Assistant Commissioners, who shall be subordinate to, and under the control of, the Deputy Commissioners of the districts to which they are respectively attached:

(*d*) Tahsíldárs, who, subject to the control of the Deputy Commissioner, shall be the Chief Executive Revenue-authorities in the tahsíls to which they are respectively attached:

(*e*) Náib Tahsíldárs, who shall be subordinate to the Tahsíldárs of the tahsíls to which they are respectively attached.

Appointment, suspension and removal of Commissioners, Deputy and Assistant Commissioners.

7. Subject to the control of the Governor General in Council, the Chief Commissioner shall appoint, and may suspend or remove, Commissioners, Deputy Commissioners and Assistant Commissioners.

Appointment, suspension and removal of Tahsíldárs and Náib Tahsíldárs.

8. The Chief Commissioner shall appoint, and may suspend or remove, Tahsíldárs; and may also make rules for regulating the appointment, duties, suspension and removal of Náib Tahsíldárs.

Persons holding office when Act comes into force.

9. All Commissioners, Deputy Commissioners, Assistant Commissioners, Tahsíldárs and Náib Tahsíldárs holding office as such in the territories to which this Act extends when this Act comes into force shall be deemed to have been appointed hereunder.

Power to appoint additional Commissioners, Deputy Commissioners and Tahsíldárs.

10. The Chief Commissioner may appoint any person to be an additional Tahsíldár in any tahsíl, or, with the sanction of the Governor General in Council, to be an additional Commissioner or additional Deputy Commissioner in any division or district, and may suspend or remove any person so appointed, but subject, in the case of an additional Commissioner or additional Deputy Commissioner, to the like sanction.

The Chief Commissioner may invest any additional Commissioner, Deputy Commissioner or Tahsíldár appointed under this section with all or any of the powers conferred by this Act on a Commissioner, Deputy Commissioner or Tahsíldár, as the case may be.

Chief Commissioner may invest Assistant Commissioner with powers of Deputy Commissioner.

11. The Chief Commissioner may invest any Assistant Commissioner attached to a district with all or any of the powers conferred by this Act on Deputy Commissioners.

Officers transferred to retain powers with which they were invested.

12. Whenever any Assistant Commissioner, Tahsíldár or Náib Tahsíldár is transferred from one district or tahsíl to another, he shall, unless the Chief Commissioner otherwise directs, exercise in the district or tahsíl to which he is transferred all the powers with which he was, under any provision of this Act, invested by the Chief Commissioner in the district or tahsíl from which he is transferred.

Provision for discharge of duties of Deputy Commissioner dying or being disabled.

13. When a Deputy Commissioner dies or is disabled from performing his duties, such officer as the Chief Commissioner may by rule direct shall take executive charge of his district, and shall be deemed to be a Deputy Commissioner under this Act, until a successor to the Deputy Commissioner so dying or disabled is appointed and such successor

takes charge of his office, or until the person so disabled resumes charge of his office.

14. The Chief Commissioner may, from time to time, by notification in the official Gazette, alter the limits of any district or tahsíl, create new districts or tahsíls and abolish existing districts or tahsíls.

Chief Commissioner may alter limits of district or tahsíl.

15. The Chief Commissioner may, subject to the control of the Governor General in Council, invest any Revenue-officer with any of the following powers:—

Power to invest Revenue-officers,—

for the purpose of disposing of cases under this Act, any power conferred by the Code of Civil Procedure on a Civil Court;

with power conferred by Code of Civil Procedure;

power to delegate to any Revenue-officer subordinate to him the exercise of any power or performance of any duty conferred or imposed on him by this Act;

with power to delegate powers.

and, subject to the like control, may determine the Revenue-officer by whom any case or class of cases for which no express provision in this behalf is made in this Act shall be disposed of.

16. Subject to any rules which the Chief Commissioner may make in this behalf, a Deputy Commissioner may—

Power of Deputy Commissioner to distribute work.

(*a*) refer any case to any Revenue-officer subordinate to him for investigation and report, or, if such officer has power to dispose of such case, for disposal; or

(*b*) direct that any Revenue-officer subordinate to him shall, without such reference, deal with any case or class of cases arising within any specified area, and either investigate and report on such case or class, or, if he has power, dispose of it himself.

The subordinate Revenue-officer shall submit his report on any case referred to him under this section for report to the Deputy Commissioner, or otherwise, as may be directed in the order of reference; and the officer receiving such report may, if he has power to dispose of the case, dispose of the same, or may return it for further investigation to the officer submitting the report, or may hold such investigation himself.

17. The Chief Commissioner, the Commissioner or the Deputy Commissioner may withdraw any case pending before any Revenue-officer subordinate to him, and either dispose of it himself, or refer it for disposal to any other Revenue-officer subordinate to him and having power to dispose of the same.

Power of superior Revenue-authorities to withdraw and transfer cases.

18. All Revenue-officers and persons acting under their orders may, in the performance of any duty under this Act, enter upon and survey land, and demarcate boundaries, and do all other acts necessary to the business in which they are engaged.

Power of Revenue-officers to enter on land, &c.

19. The Chief Commissioner may, with the previous sanction of the Governor General in Council, make rules consistent with this Act for regulating the procedure of Revenue-officers in cases for which a procedure is not prescribed by this Act, and may, by any such rule, direct that any provisions of the Code of Civil Procedure shall apply, with or without modification, to all or any classes of cases before Revenue-officers.

Power to make rules to regulate procedure.

20. All appearances before, applications to, and acts to be done before, any Revenue-officer under this Act may be made or done—

Persons by whom appearances and applications may be made before and to Revenue-officers.

(*a*) by the parties themselves; or,

(*b*) with the permission of the officer, by their recognized agents or any legal practitioner:

Provided that the employment of a legal practitioner or recognized agent shall not excuse the personal attendance of a party to any proceeding in cases where such attendance is required by any order of the Revenue-officer.

Obligation of parties to attend in person.

21. The fees of a legal practitioner or recognized agent shall not be allowed as costs before any Revenue-officer unless such officer considers, for reasons to be recorded by him in writing, that such fees should be allowed.

Legal practitioner's or agent's fees not allowed unless for special reasons.

22. An appeal shall lie against every decision or order under this Act—

Appeals.

(*a*) when such decision or order is passed by any Revenue-officer subordinate to the Deputy Commissioner, except an Assistant Commissioner exercising the powers of a Deputy Commissioner,—to the Deputy Commissioner;

(*b*) when such decision or order is passed by a Deputy Commissioner, or by an Assistant Commissioner exercising the powers of a Deputy Commissioner, whether in the first instance or on appeal,—to the Commissioner of the division;

(*c*) when such decision or order is passed on appeal or otherwise by the Commissioner of a division,—to the Chief Commissioner:

Provided that in no case shall a third appeal be allowed.

23. No appeal shall lie—

Limitation of appeals.

(*a*) in the Court of the Deputy Commissioner or an Assistant Commissioner exercising the powers of a Deputy Commissioner—after the expiration of thirty days from the date of the decision or order complained of; or

(*b*) in the Court of the Commissioner—after the expiration of sixty days from such date; or

(*c*) in the Court of the Chief Commissioner—after the expiration of ninety days from such date.

In computing such periods of limitation, and in all respects not herein specified, the provisions of the Indian Limitation Act, 1877, shall apply.

24. Any Commissioner or Deputy Commissioner may at any time, for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of, any Revenue-officer subordinate to him, call for and examine the record of any case pending before, or disposed of by, such officer, and may pass such order in reference thereto as he thinks fit:

Powers of revision of Commissioner and Deputy Commissioner.

Provided that he shall not under this section modify or reverse any order affecting any question of right between private persons, without having given to the parties interested reasonable notice to appear and be heard in support of such order.

25. The Chief Commissioner may at any time call for and examine the record of any case pending before, or disposed of by, any Revenue-officer, and may pass such order in reference thereto as he thinks fit:

Powers of revision of Chief Commissioner.

Provided that no order affecting any question of right between private persons shall be passed under this section unless the Chief Commissioner has given the parties interested an opportunity of being heard.

26. Every Revenue-officer may, either on his own motion or on the application of any party interested, review, and on so reviewing modify, reverse or confirm orders passed by himself or by any of his predecessors in office:

Review of orders.

Provided as follows—

(1) when a Commissioner or Deputy Commissioner thinks it necessary to review any order which he has not himself passed, and when an officer under the rank of a Deputy Commissioner proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction of the officer to whom he is immediately subordinate:

(2) no order shall be modified or reversed unless reasonable notice has been given to the parties interested to appear and be heard in support of such order:

(3) no order against which an appeal has been preferred shall be reviewed while such appeal is pending:

(4) no order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings; and no application for the review of such an order shall be entertained unless it is made within ninety days from the passing of the order, or unless the applicant satisfies the Revenue-officer that he had sufficient cause for not making the application within such period.

For the purposes of this section, the Deputy Commissioner shall be deemed to be the successor in office of any Revenue-officer who has left the district or has ceased to exercise powers as a Revenue-officer, and to whom there is no successor in office.

PART III.

OF SURVEY AND SETTLEMENT.

CHAPTER III.

PRELIMINARY.

27. Whenever it appears to the Chief Commissioner that a revenue-survey should be made in any local area, he shall publish a notification in the official Gazette directing that such survey be made, and cause translations of such notification in the language of the district to be posted up in conspicuous places in such area; and thereupon all officers in charge of such survey, their assistants, servants, agents and workmen may enter upon the lands to be surveyed, and erect survey-marks, and do all other acts necessary for making the survey.

Notification of revenue-survey.

Effect thereof.

28. When any local area is to be settled, the Chief Commissioner may, with the previous sanction of the Governor General in Council, issue a notification of settlement, and in such notification shall—

Notification of settlement.

(*a*) define the local area to be settled;

(*b*) specify the operations which are to be carried out in the settlement;

and may from time to time, with the like sanction, amend, alter or cancel such notification.

Power to amend notification.

Every such notification, amendment, alteration and cancellation shall be published in the local official Gazette.

29. The Chief Commissioner may, from time to time, appoint one or more officers (hereinafter called Settlement-officers) to make the settlement of such area; and when he appoints more than one such officer, he shall appoint one of them (hereinafter called the Chief Settlement-officer) to control such settlement; and all other officers appointed for the purposes of such settlement shall be subordinate to the Chief Settlement-officer.

Power to appoint Settlement-officers;

The Chief Commissioner may suspend or remove any officer appointed under this section.

and to suspend and remove them.

30. During the progress of the settlement of any local area, the Chief Commissioner may invest any Settlement-officer within such area with all or any of the powers of a Deputy Commissioner under this Act, to be exercised by him in such classes of cases as the Chief Commissioner may, from time to time, direct.

Settlement-officer may be invested with powers of Deputy Commissioner.

31. The provisions of section eleven and sections fifteen to twenty-six, both inclusive, shall apply, *mutatis mutandis*, to Settlement-officers and to proceedings before them, the expression "Settlement-officer" being read for the expressions "Assistant Commissioner" and "Revenue-officer," and the expression "Chief Settlement-officer," for the expression "Deputy Commissioner," wherever those expressions occur:

Certain provisions of Chapter II applied to Settlement-officers.

Provided that an appeal from any appealable order passed by a subordinate Settlement-officer shall lie to the Chief Settlement-officer if preferred within sixty days from the date of such order:

Provided also that no appeal shall lie from any decision of a Chief Settlement-officer which can be called in question in a Civil Court.

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

Appointment of Settlement-Commissioner;

(*a*) appoint a Settlement-Commissioner, and transfer to him, within any local area under settlement, all or any of the powers which the Commissioner of the division, if the land to be settled were wholly situate within such division, would otherwise exercise under this Act in matters connected with such settlement; and

(*b*) delegate to the Settlement-Commissioner such of his own powers in regard to matters connected with such settlement as he thinks fit.

Delegation to him of Chief Commissioner's powers.

33. When any local area is under settlement, the Chief Commissioner may invest any subordinate Settlement-officer with the powers of any of the first five grades of Courts described in section four of the Central Provinces Courts' Act, 1865, and the Chief Settlement-officer with the powers of a Court of a Deputy Commissioner described in the same Act, sections twelve, nineteen and twenty, for the trial, in the first instance, of any of the following classes of suits instituted within such area (namely) :—

Power to invest Settlement-officers with Civil Court powers.

(*a*) suits for arrears of rent due on account of any right of pasturage, forest-rights, fisheries or the like ;

(*b*) suits by lambardárs for arrears of revenue payable through them by the proprietors whom they represent ;

(*c*) suits by proprietors for their share of the profits of an estate or any part thereof after payment of the revenue and village-expenses, or for a settlement of accounts ;

(*d*) suits by muáfidárs or assignees of revenue for arrears of revenue owing to them as such muáfidárs or assignees ;

(*e*) suits by superior proprietors for arrears of revenue due to them as such superior proprietors ;

(*f*) suits by proprietors and others in receipt of the rent of land against any agents employed by them in the management of land or collection of rents, or against the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession ;

(*g*) suits regarding any matter which a Settlement-officer is required to decide or to enter in the record-of-rights, and of which Civil Courts can take cognizance ;

(*h*) suits relating to land, or the rent, profits or occupation of land.

34. When the Chief Commissioner invests any subordinate Settlement-officer with the powers of a Civil Court for the trial of any of the suits mentioned in section thirty-three, the Chief Settlement-officer to whom such Settlement-officer is subordinate shall have the powers of the Court of a Deputy Commissioner described in the Central Provinces Courts' Act, 1865, sections twelve, nineteen and twenty, with reference to proceedings before, or decrees and orders of, such Settlement-officer in such suits.

Chief Settlement-officer to have powers of Deputy Commissioner.

35. When any local area is under settlement and Settlement-officers have been invested with the powers mentioned in section thirty-three in such local area, the Chief Commissioner may, with respect to all or to any of the suits specified in that section, declare that all or any of the decrees and orders passed in exercise of the powers of Courts of the first four grades aforesaid, by Assistant Commissioners or Tahsíldárs not being Settlement-officers, shall be appealable to the Chief Settlement-officer, and not to the Deputy Commissioner of the district.

Appeals in suits specified in section 33 when to lie to Chief Settlement-officer.

36. When any local area is under settlement and the Settlement-officers therein have been invested with powers under section thirty-three, the Chief Commissioner may withdraw from the jurisdiction of the ordinary Civil Courts within such area the classes of suits which Settlement-officers have power to dispose of under that section, or he may direct that, in respect of such suits, the Settlement-officers shall have concurrent jurisdiction with the ordinary Civil Courts :

Division of civil work between Settlement-officers and ordinary Courts.

Provided that no proceedings which have been inadvertently or erroneously taken before the Civil Court shall be deemed to be invalid merely on the ground that, by the Chief Commissioner's order, they should have been taken before a Settlement-officer.

37. Nothing in section thirty-one shall apply to suits and appeals or other proceedings instituted before, or determined by, Settlement-officers in pursuance of powers conferred upon them under section thirty-three, thirty-four or thirty-five.

Provisions of section 31 not to apply to certain suits.

38. Except as provided in sections thirty-three, thirty-four and thirty-five, the decrees and orders of a Settlement-officer passed, whether in the first instance or on appeal, in exercise of the powers of a Civil Court of any grade, shall, for the purposes of appeal, reference and revision, be deemed to be decrees and orders of a Civil Court of such grade, and no appeal shall lie under the provisions of section twenty-two from such decrees or orders.

Appeal, reference and revision.

39. Every settlement notified under section twenty-eight shall be deemed to be in progress until the Chief Commissioner, by notification in the official Gazette, declares that it is completed.

Duration of settlement operations.

When the settlement of any local area has been notified as completed, all the powers exercised by the Settlement-officers in such area shall cease ; and all suits and applications pending before such officers shall be transferred to such of the Courts ordinarily having jurisdiction in such cases as the Commissioner of the Division directs, or, if there are no such Courts, shall be disposed of in such manner as the Chief Commissioner directs.

Cases pending at close of settlement-operations.

CHAPTER IV.

OF DEMARCATION.

Unowned Lands.

40. When any local area is under settlement, the Settlement-officer shall make lists of all lands in such area which appear to him to have no lawful owner, and shall thereupon issue a notification declaring his intention to demarcate such lands as the property of the Government and inviting every person having claims to or over them to present in his Court, within three months from the date of the notification, a petition in writing setting forth such claims and the respective grounds thereof.

Settlement-officer to invite claims to lands appearing to have no owner.

41. Every such notification shall be deemed to be an advertisement under Act No. XXIII of 1863 (*to provide for the adjudication of claims to waste lands*), section one ;

Application of Act XXIII of 1863.

the demarcation of such lands shall be deemed to be a disposition of them within the meaning of that Act ;

the Settlement-officer shall exercise all the powers vested in the Collector by that Act ; and

claims to or over the land comprised in such notification shall be dealt with as nearly as may be in the manner prescribed in that Act.

42. Whenever a claim to the exercise or enjoyment of any right (not amounting to the right of exclusive possession) in, to or over, any land comprised in such notification is established, either before the Settlement-officer or before the Court constituted under the said Act No. XXIII of 1863, section seven, the Settlement-officer may assign to the claimant as his property a definite portion of such land, or, with the sanction of the Chief Commissioner, he may otherwise compensate the claimant ; and such assignment or compensation shall be held to extinguish all claims on account of such exercise or enjoyment.

Procedure when limited right over land established.

Mahál.

43. The Settlement-officer may declare any local area to be a mahál.

Power to form mahals.

Excluded Lands.

44. For the purpose of excluding from all or any of the operations of the settlement any town or any land from which the owner can derive no profit, the Settlement-officer may mark off the site and determine the limits of such town or land :

Settlement-officer may exclude any town or land from settlement operations.

Provided that no land in respect of which land-revenue is payable at the date of the notification issued under section twenty-eight shall, under this section, be exempted from assessment without the sanction of the Chief Commissioner.

Boundary-marks.

45. When any local area is under settlement, the Settlement-officer may order all persons who have proprietary rights in the land comprised in such area to erect boundary-marks of such description and at such places as he thinks necessary in order to define the limits of the mahals, fields or other lands in their possession, or to repair boundary-marks already existing ; and may fix a reasonable time for obeying his order ;

Erection of new, and repair of existing, boundary-marks.

and if his order is not obeyed within such time, may cause such marks to be erected or repaired under his own orders, and may recover the cost of such erection or repair from the persons against whom his order was made, in such proportion as he thinks fit.

CHAPTER V.

OF THE ASSESSMENT OF LAND-REVENUE.

46. On every mahál a definite and separate sum shall be assessed as land-revenue ; but the sum so assessed may be reduced in such manner and to such extent as the Chief Commissioner thinks fit, for any period not exceeding ten years from the date on which the assessment takes effect.

Separate sum to be assessed on every mahál.

Progressive assessments.

47. The Chief Commissioner may, from time to time, with the previous sanction of the Governor General in Council, give instructions to the Settlement-officer as to the principle on which land-revenue is to be assessed, and as to the sources of miscellaneous income to be taken into account in the assessment.

Matters as to which Chief Commissioner is to instruct Settlement-officer.

48. In assessing a mahál all land situate therein shall be taken into account except the following (that is to say) :—

What land taken into account in assessing mahál.

(*a*) land purchased free from revenue under any rules for the time being in force to regulate the sale of waste-lands ;

(*b*) land in respect of which the revenue has been redeemed under any rules for the time being in force ;

(*c*) land excluded from assessment under section forty-four ;

(*d*) land in respect of which a claim to hold it free from revenue as against the Government is established under the provisions hereinafter contained ;

(*e*) land which the Chief Commissioner, subject to the control of the Governor General in Council, may, from time to time, exempt from assessment.

49. The assessment of every mahál shall be offered to the entire proprietary body of such mahál : provided that, when superior and inferior proprietary rights co-exist in the same mahál, the Settlement-officer may, subject to such rules as the Chief Commissioner may make in this behalf, determine whether the assessment shall be offered to the superior or to the inferior proprietors.

Assessment to whom to be offered.

Subject to such rules as the Chief Commissioner may make in this behalf, the Settlement-officer may determine the manner and proportion in which the proprietary profits of the mahál shall be allotted between the superior and the inferior proprietors.

When a proprietor has mortgaged his rights in any mahál, and the mortgagee has entered into possession, such mortgagee, so long as he is in possession, shall, for the purposes of this section, stand in the place of the mortgagor.

50. When in a mahál in which superior and inferior proprietors co-exist, the Settlement-officer makes a settlement with the superior proprietors, he shall make on their behalf a sub-settlement with the inferior proprietors, by which such inferior proprietors shall be bound to pay to the superior proprietors an annual revenue equal to the land-revenue with which the mahal is assessed and to the profits to which the superior proprietors are entitled under section forty-nine.

Sub-settlement to be made with inferior proprietors when settlement is made with superior.

51. When in any such mahál the settlement is made with the inferior proprietors, the Settlement-officer may direct that the profits to which the superior

Power to give directions as to payment of certain profits of superior proprietors.

proprietors are entitled under section forty-nine, shall be paid by the inferior proprietors direct to such superior proprietors, or that such profits shall be collected as if they were land-revenue and shall be paid to the superior proprietors from the Government Treasury.

Power to make rules for reporting assessment for sanction.

52. The Chief Commissioner may make rules prescribing the manner in which the Settlement-officer shall report for sanction his rates and method of assessment; and no assessment shall be offered without the previous sanction of the Chief Commissioner.

Offers of assessment to be made subject to revision and confirmation.

53. In making any offer of assessment the Settlement-officer shall state that it is made subject to confirmation by the Governor General in Council, and also to revision by the Chief Commissioner at any time before such confirmation is received.

Option to accept or refuse assessment.

54. It shall be in the option of the persons to whom an assessment is offered to accept or refuse the same.

Mode of acceptance.

If they are willing to accept it, they shall make and sign an acceptance in writing, in such form as the Chief Commissioner may, from time to time, prescribe in this behalf, and deliver the same to the Settlement-officer.

Proprietor not accepting in manner prescribed may be deemed to have accepted.

55. Any proprietor who, within such reasonable period as may be specified by the Chief Commissioner, fails to make, sign and deliver such acceptance, or to inform the Settlement-officer that he refuses the proposed assessment, shall, if the Settlement-officer by an order in writing so directs, be deemed to have accepted such assessment.

Effect of acceptance of assessment.

56. Whenever the assessment of a mahál has been accepted under this Act, the persons who have accepted it shall be bound to pay the amount thereof from such date and for such term as the Chief Commissioner may appoint in this behalf, or, if at the expiry of that term no new assessment has been made and is ready to take effect, until a new assessment has been made and is ready to take effect: Provided as follows:—

Assessment may be rescinded by Chief Commissioner;

1st—any assessment may be rescinded by the Chief Commissioner at any time before it has been confirmed by the Governor General in Council;

or by Governor General in Council.

2ndly—the Governor General in Council may rescind any assessment submitted to him for confirmation;

Málguzárs may object to continuance of assessment beyond term of settlement.

3rdly—if all the málguzárs of a mahál, six months before the expiry of the term fixed under this section, apply in writing to the Deputy Commissioner stating that they are unwilling that the assessment should continue in force beyond the expiry of such term, the assessment shall, on the expiry of such term, cease to be in force.

Procedure when assessment is refused.

57. Where there is but one class of proprietors in a mahál, and all refuse to accept in manner required by section fifty-four the assessment offered, the Settlement-officer may, with the previous sanction of the Chief Commissioner, exclude them from settlement for a period not exceeding thirty years from the date of such exclusion, and may either let the mahál in farm, or take it under direct management.

Procedure when only some proprietors accept assessment.

58. If some of the proprietors consent, and some refuse, so to accept the assessment offered, the Settlement-officer may, with the previous sanction of the Chief Commissioner, if the interest of the recusant proprietors in the lands taken into account in the assessment consists entirely of lands held by them separately from the other proprietors, exclude such recusant proprietors from settlement for a period not exceeding thirty years from the date of such exclusion, and either let their lands in farm or take such lands under direct management.

In other cases the assessment of the entire mahál shall be offered to the proprietors who consented to accept the assessment when originally offered, and if they refuse it the mahál shall be dealt with under the provisions of section fifty-seven.

When the recusant proprietors are excluded under this section, the lands of the proprietors who consented to accept the assessment originally offered shall be deemed to be a separate mahál, and shall be assessed as such; and such assessment shall be offered to the proprietors so consenting; and if the lands of the recusant proprietors are let in farm, the farm shall be first offered to the proprietors who consented to accept the assessment originally offered.

Procedure on refusal of assessment in village in which superior and inferior rights co-exist.

59. When an assessment is offered in a mahál in which both superior and inferior proprietors co-exist—

(*a*) if all the proprietors of the class with which the Settlement-officer proposes to make the settlement refuse to accept as aforesaid the assessment offered, the assessment shall be offered to the proprietors of the other class; and if all such proprietors refuse the assessment, the Settlement-officer shall proceed as provided in section fifty-seven;

(*b*) if some only of the proprietors of the class with which the Settlement-officer proposes to make the settlement refuse the assessment, he may either proceed as if all had refused it or may deal with the mahál under section fifty-eight:

Provided that if, in the case contemplated by clause (*b*), the proprietors who consented to accept the assessment when originally offered refuse to accept it, such assessment shall be offered to the other class of proprietors.

Procedure on refusal of assessment by inferior proprietors.

60. If all or any of the inferior proprietors refuse any assessment offered under section fifty, the Settlement-officer may exclude them all from the sub-settlement, and assign the proprietary management and profits of the mahál to the superior proprietor for any term not exceeding the term of settlement.

Allowance to excluded proprietors.

61. Any proprietor excluded from settlement under section fifty-seven or section fifty-nine, clause (*a*), shall be entitled to receive from the Government an annual allowance, the amount of which shall be fixed by the Chief Commissioner, but which shall not be less than five per cent., or more than ten per cent., on the amount of the assessment offered to him by the Settlement-officer.

Excluded proprietors to have occupancy-rights in their sír-land.

62. Any proprietor excluded from settlement or sub-settlement under sections fifty-seven to sixty, both inclusive, shall be entitled to retain possession of his sír-land (if any) as if he were an absolute occupancy-tenant, and the rent to be paid by him for such land during the term of his exclusion shall be fixed by the Settlement-officer accordingly.

Aggregate amount of allowance granted to, and deduction from rent allowed to, excluded proprietor.

63. The aggregate amount of any allowance under section sixty-one, and of the difference between the rent fixed under section sixty-two and the rent which the excluded proprietor would be liable to pay if he were a tenant-at-will, shall not be less than five or more than fifteen per cent. on the amount of the assessment offered to him by the Settlement-officer.

Sub-settlement with málik-makbúzás and other like holders of land.

64. The Settlement-officer may make, on behalf of málik-makbúzás or other like holders of land, such a sub-settlement as shall secure to them from the málguzárs of the mahál their existing rights; and may provide that, in addition to the land-revenue payable by them, they shall pay to the málguzárs such percentage thereon, not exceeding twenty per cent., as may in his opinion be sufficient to compensate the said málguzárs for their responsibility in respect of the land-revenue, and to provide for the fees of lambardárs and mukaddams.

Revenue payable under sub-settlement to be first charge on land.

65. The amount of revenue payable under a sub-settlement shall be a first charge upon all the land comprised in such sub-settlement.

Settlement-officer to apportion assessment over lands held in severalty;

66. When the whole of the land comprised in a mahál is held in severalty, the Settlement-officer shall apportion to the several holdings the amount with which such land is assessed under a settlement or sub-settlement.

When only part of the land comprised in a mahál is held in severalty, the Settlement-officer shall apportion such amount to the part held in common and the part held in severalty, and shall further apportion to the several holdings the amount to which they are liable under the former apportionment.

to redistribute land according to custom.

67. When by established custom the land held by each proprietor in any mahál is subject to periodical redistribution, the Settlement-officer may, in his discretion, on the application of the proprietors, make such redistribution according to such custom.

CHAPTER VI.

OF CERTAIN INVESTIGATIONS BY THE SETTLEMENT-OFFICER AND THE PREPARATION OF THE RECORD-OF-RIGHTS.

Settlement-officer to ascertain proprietors;

68. The Settlement-officer shall ascertain the persons who are in possession as proprietors of the land comprised in each mahál.

to determine extent of sír-land;

69. The Settlement-officer shall ascertain the situation and determine the extent of all the land held as sír in each mahál.

to decide disputes among shareholders regarding management of mahál;

70. The Settlement-officer shall ascertain the customs or rules by which the proprietors in each mahál are mutually bound as to the granting of pattás, the ejectment of tenants, the realization and distribution of rents and other profits, the payment of land-revenue, village-expenses and other charges, and generally as to the control and management of the mahál; and shall decide all disputes and record all agreements regarding the matters mentioned in this section.

to determine through what lambardárs revenue shall be paid;

71. The Settlement-officer shall determine through which of the lambardárs or sub-lambardárs the amount of revenue payable by each proprietor, sub-proprietor or málik-makbúzá shall be paid.

to ascertain status and rents of tenants.

72. The Settlement-officer shall ascertain, and record for each mahál, the status of all tenants occupying land therein, the lands respectively held by them, the conditions on which they respectively hold such lands, and the rents (if any) payable by them respectively.

Enquiry into claims to hold free from revenue as against Government.

73. The Settlement-officer shall investigate all claims against the Government to hold land free from revenue or at less than a full assessment, or to receive the whole or part of the land-revenue assessed on land which is not free from revenue.

Power of Chief Commissioner to make rules.

The Chief Commissioner may, with the previous sanction of the Governor General in Council, make rules determining the principles by which the Settlement-officer shall be guided in the disposal of claims coming under this section.

Enquiry as to claims to hold free from revenue as against málguzárs.

74. When any land not being land which any person is entitled to hold free from revenue as against the Government is held by a proprietor, whether himself a málguzár or not, who claims to hold it wholly or partially free from revenue as against the other málguzárs of the mahál, the Settlement-officer shall decide whether the claimant is entitled to be exempted from paying the whole or any part of the revenue which would otherwise be payable in respect of such land, and, if he decides that the claimant is so entitled, shall also determine the conditions under which, and the term for which, the claimant is entitled to such exemption:

Provided that no decision under this section shall exempt any land from the payment of revenue, when the mahál in which such land is comprised is sold for arrears of revenue.

Chief Commissioner may make rules for disposal of such cases.

The Chief Commissioner may make rules for the guidance of Settlement-officers in dealing with cases under this section.

Time from which orders under sections 73 and 74 take effect.

75. When the Settlement-officer decides, under section seventy-three or section seventy-four, that land which has been held free from revenue, or at less than a full assessment, is

liable to pay revenue, or to pay the same at enhanced rates, such decision shall take effect from the first day of the agricultural year next ensuing; unless the Chief Commissioner directs that the amount payable in respect of such land on account of the revenue accruing due within any one or more of the last preceding twelve years shall be realized.

Settlement-officer to decide what village-cesses are leviable;

76. The Settlement-officer shall determine and record the village-cesses, if any, which are leviable in accordance with village-custom, and the persons by and from whom, and the rates at which, they are leviable; and such cesses shall, if sanctioned by the Chief Commissioner, be leviable accordingly.

to determine certain disputes.

77. The Settlement-officer may determine disputes regarding any of the following matters (namely):—

(*a*) the right of any lambardár, mukaddam, patwárí, village-watchman or other village-servant to any customary dues, or other remuneration, and his liability to render any customary service in return for such dues or remuneration;

(*b*) the rights of persons resident in the village or holding lands comprised in the mahál, in or to the common land of the mahál and its produce, and the village-site;

(*c*) any customs relating to irrigation or to rights-of-way and other easements;

(*d*) any other rights and customs which the Chief Commissioner directs to be recorded in the administration-paper.

Procedure in cases under sections 68, 69, 70, 72 and 77, clauses (*b*), (*c*) and (*d*).

78. If a dispute arises regarding any matter mentioned or referred to in sections sixty-eight, sixty-nine, seventy, seventy-two and seventy-seven, clauses (*b*), (*c*) and (*d*), the Settlement-officer shall decide it summarily after making such enquiry as he thinks fit, and shall not be bound to hear any party to such dispute or to receive any evidence tendered by any such party; but in the case of every such dispute he shall record a proceeding stating the nature of such dispute, his decision thereon, the grounds of such decision and such other particulars as he thinks fit.

Record-of-rights.

79. The Settlement-officer shall prepare for every mahál, or, if he thinks fit, for any group of neighbouring mahals, a record-of-rights, and shall include in it—

(*a*) the results of the inquiries made under this chapter in respect of such mahál or group; and

(*b*) any other matters which the Chief Commissioner may, by rules in this behalf, direct to be entered in such paper.

Chief Commissioner may make rules regarding record-of-rights.

80. The Chief Commissioner may make rules prescribing the language in which the record-of-rights shall be drawn up, the form of the papers of which it shall consist, and the manner in which such papers shall be signed and attested by the Settlement-officer and the parties interested in the matters to which they refer.

Record-of-rights to be made over to Deputy Commissioner.

81. When the Settlement-officer has completed a record-of-rights in manner hereinbefore prescribed, he shall, subject to any order issued by the Chief Commissioner in this behalf, make it over to the Deputy Commissioner for custody.

Effect of entries in record-of-rights.

82. When the record-of-rights is duly made and attested, all entries therein shall be presumed to be correct until the contrary is shown.

Suits to contest certain settlement decisions or entries.

83. Any person deeming himself aggrieved by any decision under section seventy-eight, or by any decision of the Chief Settlement-officer in appeal therefrom, or by any entry made in the record-of-rights as to any matter referred to in that section, may institute a suit in the Civil Court to have such decision set aside or such entry cancelled or amended:

Provided as follows:—

When any suit under this section is instituted for the cancellation or amendment of an entry, the Government, if it so desires, and all persons interested in the entry, shall be made parties to the suit:

No persons by whom the record-of-rights was signed, and no persons claiming through or under them shall, without the previous sanction of the Chief Commissioner, institute any suit with a view to modify or set aside any entry relating to any matter mentioned in section seventy or section seventy-seven, clause (*b*), (*c*) or (*d*).

Revision of record-of-rights by Chief Commissioner.

84. After an assessment has been confirmed by the Governor General in Council, the Chief Commissioner shall not exercise in respect of any entry of the descriptions referred to in section eighty-three duly made in a record-of-rights prepared in connection with such assessment and duly attested, the power of revision conferred by sections twenty-five and thirty-one, unless it is proved that such entry was made inadvertently.

Proceedings regarding lands the property of Government.

85. In respect of lands declared to be the property of Government, the Settlement-officer shall, instead of proceeding as hereinbefore provided, conduct such operations, and prepare such record, as the Chief Commissioner may direct.

CHAPTER VII.

OF SETTLEMENTS MADE BEFORE THIS ACT COMES INTO FORCE.

Former settlements deemed to have been made under this Act.

86. Settlements made before this Act comes into force shall be deemed, so far as may be, to have been made hereunder; and the provisions of this Act in regard to proceedings taken and records prepared by Settlement-officers in the making of settlements hereunder shall apply in like manner to proceedings taken and records prepared before this Act comes into force.

Effect of awards of proprietary rights at such settlements.

87. When a Settlement-officer or Settlement Court has, at any settlement made before this Act comes into force, made an award of proprietary rights in any land, all claims which after consideration by such officer or Court may have been expressly decided by him or it to be invalid, or inferior to the claims of the persons in whose favour the award was made, shall be barred both as against Government and as against the persons last mentioned; and no suit shall lie for the enforcement of such claims in any Civil Court.

The award at any such settlement of proprietary rights in land to a widow shall be deemed to confer on her those rights only which, in accordance with the personal law to which she is subject, she would enjoy in land inherited by her from her husband.

When suits for proprietary rights will lie in Civil Courts.

88. Any person whose claim to proprietary rights in any land was not expressly decided by such officer or Court may sue in a Civil Court to establish such claim; and if he can prove that, when proprietary rights in such land were awarded by such officer or Court to other persons, he was entitled to interests therein of the same nature as those upon consideration of which the award was made, the Civil Court may declare him entitled to a proprietary right of such nature and extent in the land as it may deem just.

Chief Commissioner may allot waste-land to málik-makbúzás entitled thereto.

89. When at any settlement made before this Act comes into force málik-makbúzás have been declared entitled to a portion of the waste-lands comprised in any mahál, the Chief Commissioner may, notwithstanding anything contained in the record of such settlement, prescribe the extent of such portion and the mode in which the same shall be assigned to them; and may determine the nature and extent of their interests therein and the conditions on which they may hold it.

PART IV.

OF REVENUE-ADMINISTRATION.

CHAPTER VIII.

OF THE COLLECTION OF LAND-REVENUE.

Power of Chief Commissioner to regulate payment of land-revenue.

90. Notwithstanding anything contained in the record-of-rights of any village, the Chief Commissioner may fix the number and amount of the instalments, and the times, places and manner at and in which land-revenue, whether payable direct to the Government or not, shall be paid.

Until the Chief Commissioner otherwise directs, all such payments shall be made on the dates, in the instalments, in the manner and at the places on, in and at which they are payable when this Act comes into force.

"Arrear."
"Defaulters."

91. When any sum payable under a settlement or sub-settlement is not paid within the time at which it is payable under section ninety, such sum shall be deemed to be an arrear; and all the persons with whom such settlement or sub-settlement was made, their representatives and assigns, shall thereupon become jointly and severally liable for it, and shall be deemed to be defaulters within the meaning of this Act.

Realization of Revenue from Málguzárs.

Tahsíldár's statement of account to be conclusive evidence of arrear.

92. A statement of account, authenticated by the signature of the Tahsíldár, shall, for the purposes of this chapter, be conclusive evidence of the existence of any arrear payable direct to the Government, of its amount, and of the persons who in respect thereof are defaulters.

Notice of demand.

93. The Deputy Commissioner or any officer empowered by him in this behalf may, if he thinks fit, before any of the processes hereinafter referred to are issued for the recovery of such an arrear, cause a notice of demand to be served on any of the defaulters.

Processes for recovery of arrears.

94. An arrear payable directly to Government may be recovered by any one or more of the following processes:—

(*a*) by arresting the defaulter and imprisoning him in the civil jail;

(*b*) by attaching and selling his moveable property;

(*c*) by attaching the mahál in respect of which the arrear has accrued or the share or land of any málguzár who has not paid the portion of the revenue which, as between him and the other málguzárs, is payable by him, and taking the same mahál, share or land under direct management;

(*d*) by transferring the share or land of any málguzár who has not paid such portion to any málguzár who has paid the same, or if every such málguzár declines to accept such share or land, to any person having a mortgage or charge upon the same, and who consents to accept it;

(*e*) by annulling the settlement of the mahál in respect of which the arrear has accrued, and taking such mahál under direct management or farming the same;

(*f*) by selling such mahál, or the share or land of any málguzár who has not paid the portion of the revenue aforesaid;

(*g*) by selling immoveable property belonging to the defaulter other than the land in respect of which the arrear has accrued:

Provided as follows:—

(1) the process mentioned in clause (*a*) shall not be issued against any female, minor, lunatic or idiot;

(2) the processes mentioned in clauses (*d*), (*e*), (*f*) and (*g*) shall not be enforced without the previous sanction of the Chief Commissioner;

(3) no land shall be sold, and the settlement of no land shall be annulled, on account of an arrear accruing in respect of land whilst it is under attachment, or under charge of the Superintendent of Government Wards, or held under direct management, or let in farm in accordance with any of the provisions of this Act.

The processes specified in clauses (*a*), (*b*) and (*g*) may be enforced either in the district in which the default has been made, or in any other district.

Arrest and imprisonment for recovery of arrear.

95. The process mentioned in section ninety-four, clause (*a*), may be executed by issuing a warrant directing the officer named therein, if the defaulter fails to pay the arrear by a date to be fixed in the warrant, to bring him to the tahsíl.

If, when the defaulter arrives at the tahsíl, the arrear is still unpaid, the Tahsíldár may order him to be taken before the Deputy Commissioner, or may keep him under personal restraint at the

tahsíl for a period not exceeding ten days, unless within such period the arrear is paid, and may then, if the arrear is still unpaid, cause him to be taken before the Deputy Commissioner.

Imprisonment of defaulter in civil jail.

96. If the arrear is not paid when the defaulter arrives before the Deputy Commissioner, the Deputy Commissioner may issue an order to the officer in charge of the civil jail of the district, directing him to confine the defaulter in such jail for such period, not exceeding three months from the date of the order, as the Deputy Commissioner may think fit, unless within such period the arrear is paid.

Procedure in sales of moveable property.

97. Attachments and sales of moveable property made under this chapter shall be conducted as nearly as may be according to the law for the time being in force for the attachment and sale of moveable property under the decree of a Civil Court.

Management of mahál, share or land attached under section 94 (*c*).

98. After causing any attachment to be made under section ninety-four, clause (*c*), the Deputy Commissioner shall issue a proclamation declaring the attachment to be in force, and shall take the attached mahál, share or land under his own management, or place it under the management of any agent whom he may appoint for the purpose.

Effect of attachment.

99. During the continuance of an attachment under section ninety-eight, the defaulters shall be excluded from possession of the land attached, and the Deputy Commissioner or the agent appointed by him shall have all their rights to manage the land and to realize the rents and profits arising therefrom, and shall be bound by all their liabilities as málguzárs or proprietors to any subordinate proprietors or tenants of such land.

Profits of land how applied.

100. The surplus profits of such land, after defraying the cost of attachment and management, shall be applied, first, to the payment of any revenue becoming due in respect of such land during the attachment; and next, to discharging the arrear for the recovery of which the attachment was made.

Attachment when to cease.

101. The attachment shall continue until the arrear is paid or realized from the profits of the land attached, or the Deputy Commissioner reinstates the defaulters in possession:

Provided that no attachment shall continue beyond five years from the first day of the agricultural year next following its commencement.

Transfer under section 94 (*d*).

102. When it is proposed to execute the process mentioned in section ninety-four, clause (*d*), the persons to whom the share or land in respect of which the arrear is due is to be transferred shall be required to pay such arrear, or to secure its payment to the satisfaction of the Deputy Commissioner.

No such transfer shall be made for a term exceeding fifteen years from the first day of the agricultural year next after the date on which it is sanctioned by the Chief Commissioner.

Joint and several liability not affected by transfer.

No proceedings taken under this section shall affect the joint and several liability of the málguzárs of the mahál for arrears accruing in respect of such mahál subsequently to the transfer of the share or land except that, as regards all such arrears, the transferee shall stand in the place of the málguzár whose share or land is transferred.

Procedure after receipt of sanction to annulment of settlement.

103. When the Chief Commissioner sanctions the annulment of the settlement of any mahál, the Deputy Commissioner shall proclaim such annulment, and may then exclude the defaulters from the possession of the mahál, and either manage the mahál or any portion thereof himself or through an agent, or let the mahál or any portion thereof in farm for such term and on such conditions as the Chief Commissioner directs:

Provided that no management or farm under this section shall continue for a longer period than fifteen years from the first day of the agricultural year next after the proclamation of annulment of settlement.

After the date of such proclamation no liabilities shall accrue under the settlement so annulled; but such annulment shall not affect anything done or any liability incurred under the settlement before such date.

Case of a portion of a mahál being managed or farmed.

104. When a portion only of the mahál is managed or let in farm under section one hundred and three, the rest of such mahál shall be separately resettled with the proprietors thereof for the remainder of the term of settlement.

Settlement on expiry of management or farm.

105. As soon as the management or farm of any mahál or portion thereof has come to an end, the Deputy Commissioner shall offer to the persons entitled under section forty-nine to an offer of assessment a new assessment of the land, on such conditions as the Chief Commissioner may direct, for the remainder of the term of the settlement of the mahál; and, if such offer is refused, may, with the previous sanction of the Chief Commissioner, let such mahál or portion in farm for the remainder of the term of settlement to some other person, or manage it himself or through an agent for such period.

Effect of annulment of settlement.

106. No leases, liens or other incumbrances created by the defaulters, or by any person through or under whom they claim, of, or upon any land managed or let in farm under this Act, shall, during such management or farm, be binding upon the Deputy Commissioner or Settlement-officer, his agent or lessee.

Saving of rights in sír-land.

107. No defaulter shall be deprived of the possession of his sír-land in the execution of any of the processes mentioned in section ninety-four, clauses (*c*), (*d*) and (*e*); but every such defaulter shall, while such process is being enforced, be entitled to retain possession of, and liable to pay rent for, such land as if he were an absolute occupancy-tenant, at such rent as may be fixed by the Deputy Commissioner.

Nature of estate taken by purchaser of land sold for arrears due thereon.

108. Unless the Chief Commissioner in sanctioning the sale otherwise directs, a purchaser of any land sold for arrears of revenue due in respect thereof acquires the full proprietorship or superior or inferior proprietorship of it, as the case may be, free of all leases, liens and other incumbrances; and all grants or contracts previously made by any person other than the purchaser in respect of such land shall become void as against such purchaser.

Nothing in this section shall—

(*a*) affect the rights of any proprietor superior or inferior to the defaulters or of any málik-makbúzá or occupancy-tenant who does not derive his rights as such proprietor, málik-makbúzá or tenant from express contract with such defaulters, or any person through whom they claim; or

(*b*) apply to lands held under leases at fair rents for the erection thereon of dwelling-houses, places of worship or manufactories, or for working mines, minerals, coals and quarries, or for laying out and maintaining gardens and burial-grounds, or for constructing tanks and canals, so long as the lands continue to be used for the purposes specified in such leases respectively; or

(*c*) deprive any defaulter whose property is sold of the rights in respect to his sír-land conferred by any law for the time being in force.

The Chief Commissioner may, from time to time, determine what rents shall be deemed to be fair rents within the meaning of this section.

Rules for sale of immoveable property.

109. When immoveable property is sold under this Act, the rules prescribed in sections 287, 288, 293 and 306 to 316, both inclusive, of the Code of Civil Procedure shall be followed, except in the following particulars (that is to say):—

(*a*) 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 on such payment the sale shall be stayed.

(*b*) The proclamation directed by the said section 287 shall, when the sale is under clause (*f*), section ninety-four of this Act, declare that, subject to the provisions of section one hundred and eight, the full proprietorship, or superior or inferior proprietorship, as the case may be, is to be sold free from all leases, liens and other incumbrances, and the certificate mentioned in section 316 of the said Code shall contain a similar statement.

(*c*) The last two clauses of the said section 287 shall not apply.

(*d*) An appeal from any order under section 312 of the said Code for confirming or setting aside the sale shall lie to the Commissioner of the Division, and an appeal from the Commissioner's order on such appeal shall lie to the Chief Commissioner.

(*e*) The Deputy Commissioner may, from time to time, postpone any sale which he has proclaimed, reporting such postponement to the Commissioner of the Division.

(*f*) Section 309 of the said Code shall be read as if, after the words "for such payment," the words "and every sale of such property made after a postponement" were added.

(*g*) Section 313 of the said Code shall not apply to sales under section ninety-four, clause (*f*), of this Act.

(*h*) Section 316 of the said Code shall be read as if the words "The Deputy Commissioner shall place the purchaser in possession of the lands which he has purchased" were added thereto.

Pre-emption at sales.

110. In the course of a sale under section ninety-four, clause (*f*), if the property is knocked down to a stranger, the following persons may claim to take it at the sum last bid in the following order:—

(*a*) any málguzár who has paid the revenue which as between him and the other málguzárs is payable by him;

(*b*) if the superior proprietorship is sold, the inferior proprietor;

(*c*) if the inferior proprietorship is sold, the superior proprietor:

Provided that such claim is made before the officer conducting the sale closes the sitting at which the sale is held, and that the claimant undertakes to fulfil all the conditions of the sale binding on the purchaser.

Application of proceeds of sale of immoveable property.

111. The proceeds of every sale in execution of any process mentioned in section ninety-four shall be applied, first, in satisfaction of the arrear on account of which the sale was held and of the expenses of such sale; secondly, to the payment of any other arrear due to Government by the defaulter; and the surplus, if any, shall then be payable to him, or, where there are more defaulters than one, to such defaulters according to their respective shares in the property sold.

Costs recoverable as part of arrear.

112. The costs of serving a notice of demand under section ninety-three and of enforcing any process mentioned in section ninety-four shall be recoverable as part of the arrear in respect of which the notice was served and the process was issued.

Matters as to which Chief Commissioner may make rules.

113. The Chief Commissioner may make rules—

(*a*) for the guidance of Revenue-officers in issuing notices of demand under section ninety-three and executing the processes mentioned in section ninety-four;

(*b*) defining the classes of officers by whom the processes mentioned in section ninety-four, clauses (*a*) and (*b*), may be enforced;

(*c*) prescribing the agency by which any of the processes issued under section ninety-four shall be executed.

Remedies open to person denying that sum demanded as an arrear is due.

114. Notwithstanding anything contained in section ninety-two, when proceedings are taken under this Act for the recovery of an arrear, the person against whom such proceedings are taken may, if he denies that the arrear or any part thereof is due,

pay the same under protest made at the time of payment and duly signed by him or by his agent, and institute a suit in the Civil Court for the recovery of the amount which he denies to be due.

Realization of Revenue by Málguzárs.

Limitation of right to set-off, &c., in suit for arrears.

115. In a suit for the recovery of an arrear of revenue not being revenue payable directly to Government, and in a suit brought by a lambardár to recover the amount of any revenue payable to Government through him, the defendant shall not, except with the permission of the Court,—

(*a*) set-off against the plaintiff's demand any sum of money recoverable by him from the plaintiff; or

(*b*) claim credit for any payment purporting to have been made on account when such payment was made before the date on which the amount thereof became due.

Recovery of arrear through Deputy Commissioner instead of by suit.

116. Any lambardár or sub-lambardár entitled to recover an arrear, or any málguzár to whom such an arrear is due under a sub-settlement, may, before instituting a suit for the recovery thereof, apply to the Deputy Commissioner to recover such arrear on his behalf as if it were an arrear of revenue payable directly to Government.

The Deputy Commissioner may, if he thinks fit, comply with such application, but shall, before compliance therewith, give to the persons who would be defendants if a suit were instituted for the recovery of such arrear, opportunity to show cause against the order which he proposes to make.

The Deputy Commissioner shall not be made a defendant to any suit instituted under section one hundred and fourteen in respect of an arrear as to which an order has been made under this section.

No person on whose account the Deputy Commissioner proceeds under this section to recover an arrear shall thereby be relieved of his responsibility for such arrear.

Saving of right of málguzár to demand revenue of land assessed to revenue and held free.

117. Nothing in the Indian Limitation Act, 1877, and no agreement made after this Act comes into force, shall bar the right of the málguzárs of any mahál assessed with land-revenue to demand revenue in respect of any land which, having been taken into account in such assessment, has been held by any person without payment of revenue.

The Chief Commissioner may, in his discretion, exempt any case from the operation of this section.

Limitation in suits for revenue.

118. No suit for the recovery of revenue payable under a settlement or sub-settlement shall be instituted after three years reckoned from the date on which such revenue becomes payable.

In other respects the limitation of such suits shall be governed by the Indian Limitation Act, 1877.

Interest on Arrears.

Interest on arrears.

119. Interest shall not be charged on an arrear of revenue unless the Chief Commissioner, by general or special order, so directs; provided that the Court may award interest at such rate as it thinks fit on sums payable under a sub-settlement.

CHAPTER IX.

OF REVENUE AND VILLAGE RECORDS.

Correction of record-of-rights.

120. Any entry in the record-of-rights may, after such record has been made over to the Deputy Commissioner, be corrected by the Deputy Commissioner on the application of any person interested, or of his own motion. Such correction may be made on one or more of the following grounds and on no others:—

(*a*) that all persons interested in such entry wish to have it corrected; or

(*b*) that by a decree in a suit brought under section eighty-three it has been declared to be erroneous; or

(*c*) that, being founded on a decree or order of a Civil Court, or on the order of a Revenue or Settlement officer, it is not in accordance with such decree or order; or

(*d*) that, being founded on such decree or order, the order or decision has subsequently been modified on appeal or review, or has been revised by the Chief Commissioner.

Revision of record in accordance with provision therein contained.

121. The Deputy Commissioner may revise a record-of-rights when such revision is provided for in such record.

Powers of Deputy Commissioner as to correction of entry or revision of record.

122. When the Deputy Commissioner takes proceedings for the correction of any entry in the record-of-rights or for the revision of such record-of-rights, he shall exercise, for the purpose of such correction or revision, all the powers which the Chief Settlement-officer might have exercised if the proceedings had been taken whilst the settlement was in progress.

Power to direct that rule or custom entered in record-of-rights shall be enforced by Government.

123. The Chief Commissioner may, in his discretion, by notification in the official Gazette, direct that any specified rule, custom or condition duly entered in the record-of-rights of any specified village shall be enforced by the Government.

Punishment of violation of such rule or custom.

If any of the persons with whom a settlement or sub-settlement has been made, violate or neglect any rule, custom or condition with respect to which the Chief Commissioner has made a direction under this section, the Deputy Commissioner may, if no penalty is provided by any law for the time being in force for such violation or neglect, recover from such person a penalty not exceeding two hundred rupees.

Suit to set aside proceedings under section 123.

124. Any person against whom proceedings have been taken under section one hundred and twenty-three may institute a suit against Government to set aside such proceedings on the ground that no rule, custom or condition was, in fact, violated or neglected. If the Court finds that no rule, custom or condition has been violated or neglected, it may by its order annul such proceedings, and direct that any penalty paid by the plaintiff be refunded; and may also award to him such costs as he has necessarily incurred in the proceedings, and such further sum as compensation as it thinks fit.

Powers of Chief Commissioner as to registration of changes after preparation of record-of-rights.

125. The Chief Commissioner may—

(*a*) direct that the mukaddam of each village shall, for the purpose of showing the changes occurring therein subsequently to the preparation of the record-of-rights, prepare, or, where there is a patwárí, cause to be prepared, and furnish, annually for such village, papers in such form, at such time, containing such particulars, and attested in such manner, as the Chief Commissioner may, from time to time, prescribe;

(*b*) lay down the procedure to be followed in order to ascertain that a change has occurred in the village, and the nature of such change.

All changes referred to in this section shall be recorded in such registers as the Chief Commissioner appoints, and not in the record-of-rights, and the Chief Commissioner may direct that, before any specified changes are recorded, the order of a specified Revenue-officer shall be obtained in this behalf.

Possession of proprietary rights to be notified.

126. All persons lawfully entering into possession of proprietary rights and interests in any land shall, within a reasonable time, give notice of such entry to the Tahsíldár of the tahsíl in which such land is situated.

If any question arises whether any right or interest is a proprietary right or interest within the meaning of this section, the decision thereof by the Chief Commissioner shall be final.

Notice to be given by guardian in case of minority or idiotcy.

If the person so entering is a minor, lunatic or idiot, the guardian or other person who has charge of his property shall give the notice required by this section.

Fine for neglect to give notice of possession.

127. Any person neglecting to give the notice required by section one hundred and twenty-six shall be liable, at the discretion of the Deputy Commissioner or Assistant Commissioner, to fine which may extend to fifty rupees for each day during which such neglect continues.

Obligation to aid in preparation of village-papers.

128. All persons being in possession of proprietary rights in land shall, on being so required by the Deputy Commissioner, prepare, or cause to be prepared, such papers, and furnish such information, as may be required for the preparation of the village-papers prescribed under section one hundred and twenty-five.

Fees for recording changes;

129. The Chief Commissioner may direct that fees shall be leviable when changes are recorded under the last clause of section one hundred and twenty-five, and may fix the amount of such fees.

from whom leviable.

All fees so leviable shall be levied from the person in whose favour the change is made.

Annual enquiry regarding land held free from revenue.

130. The Deputy Commissioner shall in each year make enquiry regarding all cases in which land has been granted by Government, conditionally or for a time, free, wholly or in part, from the payment of revenue.

Procedure on breach of conditions of grant.

If it appears to the Deputy Commissioner that the conditions of any grant have been broken by the grantee, he shall report the case through the Commissioner of the Division for the orders of the Chief Commissioner, who may direct that the land be assessed, or may pass such other order as he thinks fit.

Procedure on expiry of term of grant.

If it appears to the Deputy Commissioner that the term of any such grant has expired, or (when the grant is for a life or lives) if the person last entitled to hold the land comprised in the grant, free from revenue, or at less than full revenue-rates, has died, he shall assess the same, and shall report his proceedings through the Commissioner of the Division for the sanction of the Chief Commissioner.

Inspection of revenue-records.

131. All records kept under this Act shall be open to public inspection at such times, and on such conditions as to fees or otherwise, as the Chief Commissioner from time to time directs.

CHAPTER X.

OF CERTAIN ADDITIONAL POWERS AND FUNCTIONS OF REVENUE-OFFICERS.

Purposes for which, when settlement is not in progress, Deputy Commissioner shall exercise Settlement-officers' powers.

132. The Deputy Commissioner shall, when a settlement is not in progress, exercise the powers conferred by this Act on Settlement-officers for the following purposes:—

(*a*) causing boundary-marks to be erected or repaired, and recovering the cost of such erection and repair;

(*b*) assessing land-revenue on lands which are liable to assessment, but have not been assessed;

(*c*) declaring any local area to be a mahál;

(*d*) settling lands from which the proprietors were excluded at settlement and to which they have been or are about to be readmitted;

(*e*) settling mahálsin respect of which an application has been made under the third proviso to section fifty-six;

(*f*) dealing with claims to hold land wholly or partially free from revenue as against the málguzárs;

(*g*) assessing lands gained by alluvion;

(*h*) ascertaining and recording village-cesses which are levied when this Act comes into force, but have not been recorded at the settlement.

Purposes for which officers may be invested with Settlement-officers' powers.

133. The Chief Commissioner may, during the currency of a settlement, invest any officer with the powers conferred on a Settlement-officer by sections forty, forty-one and forty-two; or,

with the sanction of the Governor General in Council, with any other of the powers which are by this Act conferred on a Settlement-officer; but not so as to enable him to enhance the amount of an assessment in force under section fifty-six.

Cognizance of, and penalty for, offence of injuring boundary-marks.

134. Any person wilfully erasing, removing or damaging a boundary-mark may be ordered by the Deputy Commissioner or by a Tahsíldár or Náib Tahsíldár empowered by the Chief Commissioner in this behalf to pay to the officer making the order, in addition to any fine to which such person would be liable under section 434 of the Indian Penal Code, such sum, not exceeding fifty rupees, as may in the opinion of such officer be necessary to defray the expense of restoring the same, and of rewarding the person (if any) who gave information of such erasure, removal or damage.

Procedure when person injuring cannot be found.

135. Whenever the person erasing, removing or damaging such mark cannot be discovered, or if for any other reason it is found impracticable to recover from him the sum which he has been ordered to pay, the mark shall be re-erected or repaired at the cost of the proprietors, mortgagees or farmers of such one or more of the adjoining lands as the Deputy Commissioner thinks fit.

Partition of a mahál into two maháls.

136. Any málguzárs of a mahál who are not co-sharers with the other málguzárs of such mahál in any lands comprised in such mahál, except such lands as are under the law relating to partition for the time being in force indivisible, may apply to the Deputy Commissioner to make the lands held by them separately from such other málguzárs a separate mahál; and the Deputy Commissioner shall thereupon make such lands and the lands held separately by the remaining málguzárs separate maháls, and shall, with the previous sanction of the Commissioner, apportion between the two new maháls thus constituted the entire revenue assessed upon the original mahál.

CHAPTER XI.

VILLAGE-OFFICERS AND PATWÁRIS.

Power to make rules as to officers.

137. The Chief Commissioner may make rules regulating the appointment, remuneration, suspension and removal of lambardárs, sub-lambardárs and mukaddams:

Provided that, except with the previous sanction of the Governor General in Council, proprietors, other than málik-makbúzás, shall not be liable to pay, on account of the aggregate remuneration of lambardárs or sub-lambardárs and mukaddams, a sum exceeding five per cent. on the land-revenue which is assessed on their land, or which, when their land is free from revenue, would, in the judgment of the Deputy Commissioner, be assessed on their land if it were subject to assessment.

In framing rules for the appointment under this section of lambardárs and sub-lambardárs for any mahál, the Chief Commissioner shall have regard among other matters to local custom and hereditary claims, and to entries on the subject in the record-of-rights of such mahál.

In every village in which there are resident málguzárs, one of such málguzárs shall be the mukaddam.

Duties of lambardárs.

138. It shall be the duty of every lambardár and sub-lambardár—

(*a*) to collect and pay into the Government Treasury so much of the land-revenue as may under section seventy-one be payable through him, either solely or jointly with other lambardárs or sub-lambardárs;

(*b*) to collect and pay to the mukaddam, or into the Government Treasury, as the Deputy Commissioner may direct, all sums of money payable through him, either solely or jointly with other lambardárs or sub-lambardárs, by the proprietors whom he represents, on account of the remuneration of the mukaddam, patwárís or village-watchmen, or on account of any expenses which the mukaddam is authorized to recover from the lambardárs or sub-lambardárs of his village;

(*c*) to assist the mukaddam in obtaining all particulars which he is bound to enter in the annual village-papers, or to report under this Act.

Lambardárs may recover fees and other charges from proprietors.

139. Together with the land-revenue, lambardárs and sub-lambardárs may recover from the proprietors whom they respectively represent—

(*a*) any remuneration to which they are entitled as such; and

(*b*) the sum which, under section one hundred and thirty-eight, they are bound to pay to mukaddams:

Provided that no such recovery shall be made from málik-makbúzás paying a percentage which includes remuneration to mukaddams and lambardárs.

Deputy Commissioner may alter channel through which málik-makbúzá pays revenue.

140. On the application of any málik-makbúzá or other like holder of land, or of the lambardár or sub-lambardár through whom such málik-makbúzá or other holder of land pays the revenue assessed on his holding, the Deputy Commissioner may, for sufficient cause shown, order that such revenue be paid through any other lambardár or sub-lambardár, or that it be paid into the Government Treasury.

Effect of order for payment of revenue direct to Government.

When the Deputy Commissioner orders such payment to be made into the Government Treasury, such portion of the percentage fixed under section sixty-four as the Deputy Commissioner, subject to the control of the Chief Commissioner, may determine, shall be so paid, and the málik-makbúzá or other person shall pay the rest to the mukaddams on account of their fees and the other village-expenses.

Duties of mukaddams.

141. It shall be the duty of every mukaddam—

(*a*) to control and superintend the village-patwárí and village-watchmen; to report their deaths or absence from duty; to maintain them in the possession of any lands appertaining to their office; to recover and pay to them any cash allowances to which they may be entitled; and to take such steps as may be necessary to compel them to perform their duties;

(*b*) to furnish reports regarding the state of his village, at such places and times as the Deputy Commissioner fixes in this behalf;

(*c*) to report and, if possible, to prevent encroachments on the public paths and roadways in his village;

(*d*) to preserve such stations and marks erected in his village by Government-surveyors as may be made over to his care;

(*e*) subject to any rules issued by the Chief Commissioner, to keep his village in good sanitary condition;

(*f*) to report violations of any rules which the Chief Commissioner may make for the preservation of underwood, forests and trees growing on the village-lands, and for securing to persons entitled to cut wood and enjoy other privileges in the waste-lands of the village the rights to which they are entitled;

(*g*) to collect, or aid in the collection of, all payments due to Government in his village;

(*h*) to report all births and deaths taking place in his village.

The Chief Commissioner may make rules—

(1) adding to the list of duties which a mukaddam is required to perform under this section; and

(2) regulating the liability of persons residing in any village for charges necessarily incurred by mukaddams in the performance of the duties specified in clause (*c*) in respect of such village, and for apportioning such charges among such persons; and

(3) determining the officers to whom reports under this section shall be made.

Liabilities imposed by law on landholders to attach to mukaddams.

142. When, by any enactment for the time being in force, any public duties are imposed on, or public liabilities are declared to attach to, landholders, their managers and agents and the like, such duties shall be deemed to be imposed on, and such liabilities shall be held to attach to, mukaddams appointed under this Act:

Provided that nothing herein contained shall discharge landholders, their managers or agents, or the like, from any liabilities imposed upon them by law.

Power of mukaddams to recover certain expenses incurred.

143. Every mukaddam may recover from the lambardárs or sub-lambardárs of the village to which he is appointed his own remuneration, together with any expenses necessarily incurred in the performance of his duties.

Chief Commissioner may make rules as to patwárís.

144. The Chief Commissioner may make rules—

(*a*) regulating the manner in which patwárís are to be selected; prescribing the conditions under which they may be appointed; and fixing the limits of their circles and the nature, mode and amount of their remuneration;

(*b*) prescribing the conditions under which substitutes may be appointed for persons having hereditary claims to the office of patwárí, when such persons are unable to act;

(*c*) prescribing the fines which may be imposed on patwárís and their substitutes for neglect of their duty, and stating the circumstances under which they may be suspended or removed:

Provided that, except with the previous sanction of the Governor General in Council, no proprietor shall be compelled to pay as remuneration to patwárís a sum exceeding six per cent. on the revenue for the time being assessed on his land, or which, when his land is free from revenue, would, in the judgment of the Deputy Commissioner, be assessable on his land if it were liable to assessment.

Chief Commissioner may make rules for guidance of Deputy Commissioners in certain matters.

145. The Chief Commissioner may make rules for the guidance of Deputy Commissioners in dealing with cases where, at the time of making the settlement next before this Act comes into force, the maintenance of a patwárí was made optional, and the persons settled with are unable to agree as to whether a patwárí should be maintained, and for dealing with cases where no patwárí is, under such option, maintained and the mukaddams or proprietors have made default in the performance of the duties of a patwárí.

Such rules may empower the Deputy Commissioner, in the latter class of cases—

(*a*) to impose fines not exceeding fifty rupees on such mukaddams or proprietors, and therefrom to make provision for the temporary performance of the duties in respect of which they have made default;

(*b*) to appoint patwárís in the villages of such proprietors, either for the term of the settlement or for any shorter term, and to fix the remuneration of such patwárís.

Nothing in the proviso to section one hundred and forty-four shall apply to patwárís so appointed.

Chief Commissioner may define duties of patwárís.

146. The Chief Commissioner may make rules prescribing the duties of patwárís—

(*a*) towards the Government; and may in such rules determine the registers, returns or other papers which they shall keep or furnish, the forms and language in which such registers and returns are to be prepared, the mode of their preparation and attestation, and the dates on which they are to be furnished;

(*b*) towards the members of the village-community; and may in such rules fix the remuneration, if any, other than the fixed emoluments of their office, which the patwárís may demand in respect of the performance of such duties.

Patwárís' papers to be public documents.

All records and papers which patwárís are required to prepare or keep by any rule made by the Chief Commissioner under this section shall be deemed to be public documents within the meaning of the Indian Evidence Act, 1872, and to be the property of Government.

Patwárís to produce papers for inspection, and to allow copies to be made.

147. Patwárís shall produce at all reasonable times, for the inspection of all persons interested therein, all records and papers which they are so required to prepare or keep, and shall allow such persons to make copies of such records and papers.

148. All existing lambardárs, sub-lambardárs, mukaddams and patwáris shall, unless the Chief Commissioner in any specified case otherwise directs, be deemed to have been appointed under this Act.

Existing officers confirmed.

149. Any sums which lambardárs, sub-lambardárs, mukaddams and patwáris are entitled to recover or demand under this chapter may, if the Deputy Commissioner so directs, be recovered in the same manner as an arrear of revenue payable directly to the Government.

Lambardárs' and other officers' dues recoverable as arrears.

150. In each village of the district of Sambalpúr all persons holding sír-land, other than mukaddams, are bound to provide for the due remuneration of the mukaddam of the village; and the Chief Commissioner may make rules for the enforcement of this obligation.

Holders of sír-land in Sambalpúr to provide for remuneration of mukaddams.

PART V.

CHAPTER XII.

MISCELLANEOUS.

151. Unless it is otherwise expressly provided in the records of a settlement or by the terms of a grant made by the Government, the right to all mines, minerals, coals and quarries, and to all fisheries in navigable rivers, and the right to extract sap from all palmyra and cocoanut trees, shall be deemed to belong to Government; and the Government shall have all powers necessary for the proper enjoyment of such rights:

Right to mines and quarries.

Provided that, whenever in the exercise by the Government of the rights herein referred to over any land, the rights of any persons are infringed by the occupation or disturbance of the surface of such land, the Government shall pay to such persons compensation for such infringement, and the amount of such compensation shall be determined as nearly as may be in accordance with the provisions of the Land Acquisition Act, 1870.

152. Except as otherwise hereinbefore provided,—

Exclusive jurisdiction of Revenue-authorities.

(*a*) no Civil Court shall entertain any suit instituted, or application made, to obtain a decision or order on any matter which the Governor General in Council, the Chief Commissioner or a Revenue or Settlement officer is, by this Act, empowered to determine or dispose of; and in particular

Matters excepted from jurisdiction of Civil Courts.

(*b*) no Civil Court shall exercise jurisdiction over any of the following matters:—

(1) any matters provided for in sections forty, forty-one, forty-two and eighty-nine, as to waste-lands:

(2) the claim of any person to have an assessment offered to, or sub-settlement made with, him:

(3) the amount of revenue or rate to be assessed on any mahál, share or portion of a mahál under this or any other Act for the time being in force:

(4) questions as to the validity of any engagement with Government for the payment of land-revenue, or of any agreement entered into by superior or inferior proprietors in a settlement or sub-settlement:

(5) claims connected with or arising out of any process enforced on account of refusal to accept the assessment offered in a settlement or sub-settlement by the Settlement-officer or Deputy Commissioner:

(6) the amount of the allowance or rent fixed under section sixty-one or sixty-two:

(7) the redistribution according to established custom, by a Settlement-officer, of land comprised in a mahál:

(8) the formation of the record-of-rights,

the preparation, signing or attestation of any of the documents contained therein, or

the notification of settlement:

(9) any matters provided for or referred to in section seventy-three, seventy-four or one hundred and thirty as to lands held or claimed to be held free from revenue, except rights arising under any contract between the Government of India and grantees of land:

(10) claims connected with, or arising out of, the collection of revenue, or any process enforced on account of an arrear of revenue, or on account of any sum which is under this or any other Act realizable as revenue:

(11) claims to set aside, on any ground other than fraud, sales for arrears of revenue:

(12) corrections of entries or revisions of records under sections one hundred and twenty, one hundred and twenty-one and one hundred and twenty-two:

(13) claims to have a partition and apportionment made under section one hundred and thirty-six, and questions as to the distribution or apportionment under that section of the land or of the revenue of a mahál:

(14) claims to the office of patwári, lambardár, sub-lambardár or mukaddam, or in respect of any injury caused by exclusion therefrom, or to compel the performance of the duties thereof:

(15) claims to compel the performance of any duties imposed by this Act on any Revenue or Settlement officer.

In all the above cases jurisdiction shall rest with the Revenue-authorities only.

153. No suit shall lie in any Civil or Revenue Court for the recovery of any village-cess which has not been sanctioned by the Chief Commissioner and also either recorded at a settlement or under section one hundred and thirty-two, clause (*h*).

For what village-cesses suit lies.

154. Whenever, at any settlement made before this Act comes into force, waste-lands have been demarcated as the property of Government, no claim of any person to, or in respect of, such lands shall be entertained by any Civil Court after the expiration of three years from the date of such demarcation.

Limitation of claims for compensation in case of waste-land demarcated as property of Government.

155. No Revenue or Settlement officer, and no person employed in any Revenue or Settlement office, shall, except with the express permission of the Chief Commissioner,—

Restriction on Revenue and Settlement officers trading and holding land.

(*a*) engage in trade, or be in any way concerned, directly or indirectly, in any commercial transaction, or in the purchase or hiring of land, in the district to which he is appointed, or in which he is employed;

(*b*) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property which may be sold by order of any Revenue-authority in such district.

The Chief Commissioner may delegate to Commissioners of Divisions or to Deputy Commissioners the power of granting the permission mentioned in this section in the case of any specified class of officers.

Nothing in this section shall be deemed to preclude any person from becoming a member of a company incorporated under the Indian Companies Act, 1866.

156. When any mahál is managed or let in farm under section fifty-seven or fifty-eight, or when either of the proclamations mentioned in sections ninety-eight and one hundred and three has been made, all sums due to the proprietor in respect of the mahál, share or land mentioned in any of the said sections shall be payable only to the Deputy Commissioner or Settlement-officer, his agent or lessee; and no payment made to such proprietor in anticipation of the usual period for such payment shall, without the sanction of the Deputy Commissioner or Settlement-officer, be credited to the person making the same in account with the Deputy Commissioner or Settlement-officer, his agent or lessee.

When mahál managed or farmed, or upon proclamation under section 98 or 103, rent payable to Deputy Commissioner.

Payment to proprietor in anticipation of due date.

157. When any land has been let in farm under the provisions of this Act, any revenue due from the farmer in respect of such land may be recovered from him or his surety as an arrear of revenue payable directly to Government.

Recovery of balances due by farmers.

158. All land-revenue due when this Act comes into force, and all penalties or other moneys payable to, or recoverable by, an officer of Government under this Act, shall be recovered from the persons from whom they are due and from the sureties (if any) of such persons as if such land-revenue, penalties or moneys were an arrear of revenue payable directly to Government due under this Act by such persons and their sureties.

Recovery of revenue due when Act comes into force;

and of money payable under Act.

159. All proceedings taken before this Act comes into force for the collection of the land-revenue or the realization of arrears thereof shall be deemed to have been taken in accordance with law.

Past proceedings for collection of revenue legalized.

160. In conferring powers under this Act the Chief Commissioner may empower persons by name or classes of officials generally by their official titles.

Chief Commissioner may empower persons by name, or confer powers on classes.

161. The Chief Commissioner may vary or cancel any order conferring powers under this Act.

Chief Commissioner may vary or cancel orders.

162. The Chief Commissioner may, with the previous sanction of the Governor General in Council, make rules consistent with this Act for carrying out its provisions, and may attach to the breach of any such rule, or of any other rule made by him under this Act, a penalty which may extend to two hundred rupees, or, when such breach is a continuing breach, to fifty rupees for each day during which such breach continues.

Chief Commissioner may make rules and attach penalty to breach thereof.

All powers to make rules conferred by this Act on the Chief Commissioner shall be exercised subject to the control of the Governor General in Council, and may be exercised from time to time as occasion requires.

No rule made by the Chief Commissioner under this Act shall take effect until it has been published in the local official Gazette.

All such rules, when so published, shall have the force of law.

SCHEDULE.

(*See section 2.*)

ENACTMENTS REPEALED.

Number and year.	Title.	Extent of repeal.
Act XII of 1841.	For amending the Bengal Code in regard to sales of land for arrears of revenue.	So much as has not been repealed.
Act I of 1847	For the establishment and maintenance of boundary-marks in the North-Western Provinces of Bengal.	The whole.
Act XXXI of 1858.	To make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal.	The whole.

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(Nothing hereinafter contained shall be deemed to have the force of law.)

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PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publicatin.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 8th June, 1881, and is hereby promulgated for general information :—

ACT No. XVIII OF 1881.

THE CENTRAL PROVINCES LAND-REVENUE ACT, 1881.

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SCHEDULE—ENACTMENTS REPEALED.

An Act to consolidate and amend the law relating to Land-revenue and the powers of Revenue-officers in the Central Provinces.

Preamble. WHEREAS it is expedient to consolidate and amend the law relating to Land-revenue and to the powers of Revenue-officers in the Central Provinces; It is hereby enacted as follows:—

PART I.

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The Central Provinces Land-revenue Act, 1881":

Local extent. It extends to all the territories for the time being under the administration of the Chief Commissioner of the Central Provinces, except those specified in Part VI of the first schedule of the Scheduled Districts Act, 1874:

Commencement. And it shall come into force on such day as the Chief Commissioner, with the previous sanction of the Governor General in Council, may direct by notification in the local official Gazette.

Enactments repealed. 2. On and from such day the enactments mentioned in the schedule hereto annexed, so far as they relate to the territories to which this Act extends, and all other rules, regulations and enactments relating to the settlement and collection of the land-revenue in such territories, shall be repealed.

Pending proceedings. 3. All proceedings relating to matters dealt with by this Act and, when this Act comes into force, pending before officers by whom they would be cognizable under this Act, shall be deemed, so far as may be, to have been commenced hereunder.

Interpretation-clause. 4. In this Act, unless there is something repugnant in the subject or context,—

"Assistant Commissioner": (1) "Assistant Commissioner" includes also "Extra Assistant Commissioner":

"Legal Practitioner": (2) "Legal Practitioner" means an advocate, vakíl or attorney of any High Court, a pleader, mukhtár or revenue-agent:

"Village-cess": (3) "Village-cess" means any cess which a person resident or holding lands in a village pays or renders to the proprietors as such of the village, and includes service rendered or things furnished as well as money paid:

"Recognized agent": (4) "Recognized agent" means a person authorized in writing by any party to a proceeding under this Act to make appearances and applications and to do other acts on his behalf in such proceeding and also belonging to any class which the Chief Commissioner may, from time to time, by notification in the official Gazette, declare in this behalf:

"Agricultural year": (5) "Agricultural year" means the year commencing on the first day of June, or on such other date as the Chief Commissioner may, in the case of any specified District or Districts, from time to time, appoint:

"Sír-land": (6) "Sír-land" means (*a*) land recorded as "sír" in the papers of the last preceding settlement of the local area in which such land is situate; and (*b*) land not so recorded, but which has been cultivated by the proprietor or one of the proprietors thereof for a period of not less than twelve consecutive years; and (*c*) waste land which has been broken up by the proprietor or one of the proprietors thereof and cultivated by him for a period of not less than six consecutive years; and (*d*) in Sambalpúr, includes also "bhogra" land.

Explanation.—Land which has, after the date of such settlement, or the expiry of such period of twelve years, or six years (as the case may be), been for a period of six consecutive years unoccupied by such proprietor is not sír-land. Land is not unoccupied by the proprietor when it is leased out by him with an express reservation of his sír-rights:

"Mahál": (7) "Mahál" means any local area held under a separate engagement for the payment of the land-revenue direct to Government, and includes also any local area declared, under the provisions of this Act, to be a mahál:

"Village": (8) "Village" includes any tract of land which, at the last settlement of such land, has been recognized as a village, or which the Chief Commissioner may, from time to time, declare to be a village for the purposes of this Act:

"Málguzár": (9) "Málguzár" means a person who, under the provisions of this Act, has accepted, or is to be deemed to have accepted, the assessment of a mahál, and includes his representatives and assigns; and also any person with whom a settlement has been made before this Act comes into force, and his representatives and assigns;

(10) "Málik-makbúzá" means any person owning one or more plots of land assessed with revenue in a mahál; but it does not include a málguzár or inferior proprietor:

"Málik-makbúzá":

(11) "Lambardár" means a person appointed in manner prescribed by this Act to represent the proprietary body of a mahál in its relations with the Government:

"Lambardár":

(12) "Sub-lambardár" means a person so appointed to represent the inferior proprietary body of a mahál in its relations with the superior proprietors:

"Sub-lambardár":

(13) "Mukaddam" means the executive headman of a village, appointed in manner prescribed by this Act:

"Mukaddam":

(14) "Tenant" means a person who holds land of another person, and is, or but for a special contract would be, liable to pay rent for such land to such other person; but it does not include a farmer, mortgagee or thekadár of proprietary rights.

"Tenant":

Explanation.—An inferior proprietor is not, as such, a tenant:

(15) "Rent" means whatever is paid, delivered or rendered, in money, kind or service, by a tenant on account of the use or occupation of land let to him:

"Rent":

(16) "Absolute occupancy-tenant" means, in reference to any land, a tenant who, at a settlement of such land made before this Act comes into force, or after such a settlement but before this Act comes into force, was recorded, by order of a Revenue or Settlement officer, in respect of such land, as an "absolute occupancy-raiyat," or in terms equivalent thereto:

"Absolute occupancy-tenant":

(17) "Record-of-rights" includes the supplementary administration-paper prepared at or after the time of making a settlement before this Act comes into force.

"Record-of-rights."

PART II.

CHAPTER II.

OF REVENUE-OFFICERS: THEIR POWERS AND PROCEDURE.

Chief Controlling Revenue-authority.

5. The Chief Commissioner shall, subject to the control of the Governor General in Council, be the Chief Controlling Revenue-authority.

Revenue-officers.

6. Besides the Chief Commissioner, there shall be the following classes of Revenue-officers (namely):—

(*a*) Commissioners, who, subject to the control of the Chief Commissioner, shall be the Chief Revenue-authorities within their respective divisions:

(*b*) Deputy Commissioners, who, subject to the control of the Commissioner, shall be the Chief Revenue-authorities within their respective districts:

(*c*) Assistant Commissioners, who shall be subordinate to, and under the control of, the Deputy Commissioners of the districts to which they are respectively attached:

(*d*) Tahsíldárs, who, subject to the control of the Deputy Commissioner, shall be the Chief Executive Revenue-authorities in the tahsíls to which they are respectively attached:

(*e*) Náib Tahsíldárs, who shall be subordinate to the Tahsíldárs of the tahsíls to which they are respectively attached.

Appointment, suspension and removal of Commissioners, Deputy and Assistant Commissioners.

7. Subject to the control of the Governor General in Council, the Chief Commissioner shall appoint, and may suspend or remove, Commissioners, Deputy Commissioners and Assistant Commissioners.

Appointment, suspension and removal of Tahsíldárs and Náib Tahsíldárs.

8. The Chief Commissioner shall appoint, and may suspend or remove, Tahsíldárs; and may also make rules for regulating the appointment, duties, suspension and removal of Náib Tahsíldárs.

Persons holding office when Act comes into force.

9. All Commissioners, Deputy Commissioners, Assistant Commissioners, Tahsíldárs and Náib Tahsíldárs holding office as such in the territories to which this Act extends when this Act comes into force shall be deemed to have been appointed hereunder.

Power to appoint additional Commissioners, Deputy Commissioners and Tahsíldárs.

10. The Chief Commissioner may appoint any person to be an additional Tahsíldár in any tahsíl, or, with the sanction of the Governor General in Council, to be an additional Commissioner or additional Deputy Commissioner in any division or district, and may suspend or remove any person so appointed, but subject, in the case of an additional Commissioner or additional Deputy Commissioner, to the like sanction.

The Chief Commissioner may invest any additional Commissioner, Deputy Commissioner or Tahsíldár appointed under this section with all or any of the powers conferred by this Act on a Commissioner, Deputy Commissioner or Tahsíldár, as the case may be.

Chief Commissioner may invest Assistant Commissioner with powers of Deputy Commissioner.

11. The Chief Commissioner may invest any Assistant Commissioner attached to a district with all or any of the powers conferred by this Act on Deputy Commissioners.

Officers transferred to retain powers with which they were invested.

12. Whenever any Assistant Commissioner, Tahsíldár or Náib Tahsíldár is transferred from one district or tahsíl to another, he shall, unless the Chief Commissioner otherwise directs, exercise in the district or tahsíl to which he is transferred all the powers with which he was, under any provision of this Act, invested by the Chief Commissioner in the district or tahsíl from which he is transferred.

Provision for discharge of duties of Deputy Commissioner dying or being disabled.

13. When a Deputy Commissioner dies or is disabled from performing his duties, such officer as the Chief Commissioner may by rule direct shall take executive charge of his district, and shall be deemed to be a Deputy Commissioner under this Act, until a successor to the Deputy Commissioner so dying or disabled is appointed and such successor

takes charge of his office, or until the person so disabled resumes charge of his office.

14. The Chief Commissioner may, from time to time, by notification in the official Gazette, alter the limits of any district or tahsíl, create new districts or tahsíls and abolish existing districts or tahsíls.

Chief Commissioner may alter limits of district or tahsíl.

15. The Chief Commissioner may, subject to the control of the Governor General in Council, invest any Revenue-officer with any of the following powers:—

Power to invest Revenue-officers,—

for the purpose of disposing of cases under this Act, any power conferred by the Code of Civil Procedure on a Civil Court;

with power conferred by Code of Civil Procedure;

power to delegate to any Revenue-officer subordinate to him the exercise of any power or performance of any duty conferred or imposed on him by this Act;

with power to delegate powers.

and, subject to the like control, may determine the Revenue-officer by whom any case or class of cases for which no express provision in this behalf is made in this Act shall be disposed of.

16. Subject to any rules which the Chief Commissioner may make in this behalf, a Deputy Commissioner may—

Power of Deputy Commissioner to distribute work.

(*a*) refer any case to any Revenue-officer subordinate to him for investigation and report, or, if such officer has power to dispose of such case, for disposal; or

(*b*) direct that any Revenue-officer subordinate to him shall, without such reference, deal with any case or class of cases arising within any specified area, and either investigate and report on such case or class, or, if he has power, dispose of it himself.

The subordinate Revenue-officer shall submit his report on any case referred to him under this section for report to the Deputy Commissioner, or otherwise, as may be directed in the order of reference; and the officer receiving such report may, if he has power to dispose of the case, dispose of the same, or may return it for further investigation to the officer submitting the report, or may hold such investigation himself.

17. The Chief Commissioner, the Commissioner or the Deputy Commissioner may withdraw any case pending before any Revenue-officer subordinate to him, and either dispose of it himself, or refer it for disposal to any other Revenue-officer subordinate to him and having power to dispose of the same.

Power of superior Revenue-authorities to withdraw and transfer cases.

18. All Revenue-officers and persons acting under their orders may, in the performance of any duty under this Act, enter upon and survey land, and demarcate boundaries, and do all other acts necessary to the business in which they are engaged.

Power of Revenue-officers to enter on land, &c.

19. The Chief Commissioner may, with the previous sanction of the Governor General in Council, make rules consistent with this Act for regulating the procedure of Revenue-officers in cases for which a procedure is not prescribed by this Act, and may, by any such rule, direct that any provisions of the Code of Civil Procedure shall apply, with or without modification, to all or any classes of cases before Revenue-officers.

Power to make rules to regulate procedure.

20. All appearances before, applications to, and acts to be done before, any Revenue-officer under this Act may be made or done—

Persons by whom appearances and applications may be made before and to Revenue-officers.

(*a*) by the parties themselves; or,

(*b*) with the permission of the officer, by their recognized agents or any legal practitioner:

Provided that the employment of a legal practitioner or recognized agent shall not excuse the personal attendance of a party to any proceeding in cases where such attendance is required by any order of the Revenue-officer.

Obligation of parties to attend in person.

21. The fees of a legal practitioner or recognized agent shall not be allowed as costs before any Revenue-officer unless such officer considers, for reasons to be recorded by him in writing, that such fees should be allowed.

Legal practitioner's or agent's fees not allowed unless for special reasons.

22. An appeal shall lie against every decision or order under this Act—

Appeals.

(*a*) when such decision or order is passed by any Revenue-officer subordinate to the Deputy Commissioner, except an Assistant Commissioner exercising the powers of a Deputy Commissioner,—to the Deputy Commissioner;

(*b*) when such decision or order is passed by a Deputy Commissioner, or by an Assistant Commissioner exercising the powers of a Deputy Commissioner, whether in the first instance or on appeal,—to the Commissioner of the division;

(*c*) when such decision or order is passed on appeal or otherwise by the Commissioner of a division,—to the Chief Commissioner:

Provided that in no case shall a third appeal be allowed.

Limitation of appeals.

23. No appeal shall lie—

(*a*) in the Court of the Deputy Commissioner or an Assistant Commissioner exercising the powers of a Deputy Commissioner—after the expiration of thirty days from the date of the decision or order complained of; or

(*b*) in the Court of the Commissioner—after the expiration of sixty days from such date; or

(*c*) in the Court of the Chief Commissioner—after the expiration of ninety days from such date.

In computing such periods of limitation, and in all respects not herein specified, the provisions of the Indian Limitation Act, 1877, shall apply.

24. Any Commissioner or Deputy Commissioner may at any time, for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of, any Revenue-officer subordinate to him, call for and examine the record of any case pending before, or disposed of by, such officer, and may pass such order in reference thereto as he thinks fit:

Powers of revision of Commissioner and Deputy Commissioner.

Provided that he shall not under this section modify or reverse any order affecting any question of right between private persons, without having given to the parties interested reasonable notice to appear and be heard in support of such order.

25. The Chief Commissioner may at any time call for and examine the record of any case pending before, or disposed of by, any Revenue-officer, and may pass such order in reference thereto as he thinks fit:

Powers of revision of Chief Commissioner.

Provided that no order affecting any question of right between private persons shall be passed under this section unless the Chief Commissioner has given the parties interested an opportunity of being heard.

26. Every Revenue-officer may, either on his own motion or on the application of any party interested, review, and on so reviewing modify, reverse or confirm orders passed by himself or by any of his predecessors in office:

Review of orders.

Provided as follows—

(1) when a Commissioner or Deputy Commissioner thinks it necessary to review any order which he has not himself passed, and when an officer under the rank of a Deputy Commissioner proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction of the officer to whom he is immediately subordinate:

(2) no order shall be modified or reversed unless reasonable notice has been given to the parties interested to appear and be heard in support of such order:

(3) no order against which an appeal has been preferred shall be reviewed while such appeal is pending:

(4) no order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings; and no application for the review of such an order shall be entertained unless it is made within ninety days from the passing of the order, or unless the applicant satisfies the Revenue-officer that he had sufficient cause for not making the application within such period.

For the purposes of this section, the Deputy Commissioner shall be deemed to be the successor in office of any Revenue-officer who has left the district or has ceased to exercise powers as a Revenue-officer, and to whom there is no successor in office.

PART III.

OF SURVEY AND SETTLEMENT.

CHAPTER III.

PRELIMINARY.

27. Whenever it appears to the Chief Commissioner that a revenue-survey should be made in any local area, he shall publish a notification in the official Gazette directing that such survey be made, and cause translations of such notification in the language of the district to be posted up in conspicuous places in such area; and thereupon all officers in charge of such survey, their assistants, servants, agents and workmen may enter upon the lands to be surveyed, and erect survey-marks, and do all other acts necessary for making the survey.

Notification of revenue-survey. Effect thereof.

28. When any local area is to be settled, the Chief Commissioner may, with the previous sanction of the Governor General in Council, issue a notification of settlement, and in such notification shall—

Notification of settlement.

(*a*) define the local area to be settled;

(*b*) specify the operations which are to be carried out in the settlement;

and may from time to time, with the like sanction, amend, alter or cancel such notification.

Power to amend notification.

Every such notification, amendment, alteration and cancellation shall be published in the local official Gazette.

29. The Chief Commissioner may, from time to time, appoint one or more officers (hereinafter called Settlement-officers) to make the settlement of such area; and when he appoints more than one such officer, he shall appoint one of them (hereinafter called the Chief Settlement-officer) to control such settlement; and all other officers appointed for the purposes of such settlement shall be subordinate to the Chief Settlement-officer.

Power to appoint Settlement-officers;

The Chief Commissioner may suspend or remove any officer appointed under this section.

and to suspend and remove them.

30. During the progress of the settlement of any local area, the Chief Commissioner may invest any Settlement-officer within such area with all or any of the powers of a Deputy Commissioner under this Act, to be exercised by him in such classes of cases as the Chief Commissioner may, from time to time, direct.

Settlement-officer may be invested with powers of Deputy Commissioner.

31. The provisions of section eleven and sections fifteen to twenty-six, both inclusive, shall apply, *mutatis mutandis*, to Settlement-officers and to proceedings before them, the expression "Settlement-officer" being read for the expressions "Assistant Commissioner" and "Revenue-officer," and the expression "Chief Settlement-officer," for the expression "Deputy Commissioner," wherever those expressions occur:

Certain provisions of Chapter II applied to Settlement-officers.

Provided that an appeal from any appealable order passed by a subordinate Settlement-officer shall lie to the Chief Settlement-officer if preferred within sixty days from the date of such order:

Provided also that no appeal shall lie from any decision of a Chief Settlement-officer which can be called in question in a Civil Court.

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

Appointment of Settlement-Commissioner;

(*a*) appoint a Settlement-Commissioner, and transfer to him, within any local area under settlement, all or any of the powers which the Commissioner of the division, if the land to be settled were wholly situate within such division, would otherwise exercise under this Act in matters connected with such settlement; and

(*b*) delegate to the Settlement-Commissioner such of his own powers in regard to matters connected with such settlement as he thinks fit.

Delegation to him of Chief Commissioner's powers.

33. When any local area is under settlement, the Chief Commissioner may invest any subordinate Settlement-officer with the powers of any of the first five grades of Courts described in section four of the Central Provinces Courts' Act, 1865, and the Chief Settlement-officer with the powers of a Court of a Deputy Commissioner described in the same Act, sections twelve, nineteen and twenty, for the trial, in the first instance, of any of the following classes of suits instituted within such area (namely) :—

Power to invest Settlement-officers with Civil Court powers.

(*a*) suits for arrears of rent due on account of any right of pasturage, forest-rights, fisheries or the like ;

(*b*) suits by lambardárs for arrears of revenue payable through them by the proprietors whom they represent ;

(*c*) suits by proprietors for their share of the profits of an estate or any part thereof after payment of the revenue and village-expenses, or for a settlement of accounts ;

(*d*) suits by muáfidárs or assignees of revenue for arrears of revenue owing to them as such muáfidárs or assignees ;

(*e*) suits by superior proprietors for arrears of revenue due to them as such superior proprietors ;

(*f*) suits by proprietors and others in receipt of the rent of land against any agents employed by them in the management of land or collection of rents, or against the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession ;

(*g*) suits regarding any matter which a Settlement-officer is required to decide or to enter in the record-of-rights, and of which Civil Courts can take cognizance ;

(*h*) suits relating to land, or the rent, profits or occupation of land.

34. When the Chief Commissioner invests any subordinate Settlement-officer with the powers of a Civil Court for the trial of any of the suits mentioned in section thirty-three, the Chief Settlement-officer to whom such Settlement-officer is subordinate shall have the powers of the Court of a Deputy Commissioner described in the Central Provinces Courts' Act, 1865, sections twelve, nineteen and twenty, with reference to proceedings before, or decrees and orders of, such Settlement-officer in such suits.

Chief Settlement-officer to have powers of Deputy Commissioner.

35. When any local area is under settlement and Settlement-officers have been invested with the powers mentioned in section thirty-three in such local area, the Chief Commissioner may, with respect to all or to any of the suits specified in that section, declare that all or any of the decrees and orders passed in exercise of the powers of Courts of the first four grades aforesaid, by Assistant Commissioners or Tahsíldárs not being Settlement-officers, shall be appealable to the Chief Settlement-officer, and not to the Deputy Commissioner of the district.

Appeals in suits specified in section 33 when to lie to Chief Settlement-officer.

36. When any local area is under settlement and the Settlement-officers therein have been invested with powers under section thirty-three, the Chief Commissioner may withdraw from the jurisdiction of the ordinary Civil Courts within such area the classes of suits which Settlement-officers have power to dispose of under that section, or he may direct that, in respect of such suits, the Settlement-officers shall have concurrent jurisdiction with the ordinary Civil Courts :

Division of civil work between Settlement-officers and ordinary Courts.

Provided that no proceedings which have been inadvertently or erroneously taken before the Civil Court shall be deemed to be invalid merely on the ground that, by the Chief Commissioner's order, they should have been taken before a Settlement-officer.

37. Nothing in section thirty-one shall apply to suits and appeals or other proceedings instituted before, or determined by, Settlement-officers in pursuance of powers conferred upon them under section thirty-three, thirty-four or thirty-five.

Provisions of section 31 not to apply to certain suits.

38. Except as provided in sections thirty-three, thirty-four and thirty-five, the decrees and orders of a Settlement-officer passed, whether in the first instance or on appeal, in exercise of the powers of a Civil Court of any grade, shall, for the purposes of appeal, reference and revision, be deemed to be decrees and orders of a Civil Court of such grade, and no appeal shall lie under the provisions of section twenty-two from such decrees or orders.

Appeal, reference and revision.

39. Every settlement notified under section twenty-eight shall be deemed to be in progress until the Chief Commissioner, by notification in the official Gazette, declares that it is completed.

Duration of settlement operations.

When the settlement of any local area has been notified as completed, all the powers exercised by the Settlement-officers in such area shall cease ; and all suits and applications pending before such officers shall be transferred to such of the Courts ordinarily having jurisdiction in such cases as the Commissioner of the Division directs, or, if there are no such Courts, shall be disposed of in such manner as the Chief Commissioner directs.

Cases pending at close of settlement-operations.

CHAPTER IV.

OF DEMARCATION.

Unowned Lands.

40. When any local area is under settlement, the Settlement-officer shall make lists of all lands in such area which appear to him to have no lawful owner, and shall thereupon issue a notification declaring his intention to demarcate such lands as the property of the Government and inviting every person having claims to or over them to present in his Court, within three months from the date of the notification, a petition in writing setting forth such claims and the respective grounds thereof.

Settlement-officer to invite claims to lands appearing to have no owner.

41. Every such notification shall be deemed to be an advertisement under Act No. XXIII of 1863 (*to provide for the adjudication of claims to waste lands*), section one ;

Application of Act XXIII of 1863.

the demarcation of such lands shall be deemed to be a disposition of them within the meaning of that Act ;

the Settlement-officer shall exercise all the powers vested in the Collector by that Act ; and

claims to or over the land comprised in such notification shall be dealt with as nearly as may be in the manner prescribed in that Act.

42. Whenever a claim to the exercise or enjoyment of any right (not amounting to the right of exclusive possession) in, to or over, any land comprised in such notification is established, either before the Settlement-officer or before the Court constituted under the said Act No. XXIII of 1863, section seven, the Settlement-officer may assign to the claimant as his property a definite portion of such land, or, with the sanction of the Chief Commissioner, he may otherwise compensate the claimant ; and such assignment or compensation shall be held to extinguish all claims on account of such exercise or enjoyment.

Procedure when limited right over land established.

Maháls.

43. The Settlement-officer may declare any local area to be a mahál.

Power to form mahals.

Excluded Lands.

44. For the purpose of excluding from all or any of the operations of the settlement any town or any land from which the owner can derive no profit, the Settlement-officer may mark off the site and determine the limits of such town or land :

Settlement-officer may exclude any town or land from settlement operations.

Provided that no land in respect of which land-revenue is payable at the date of the notification issued under section twenty-eight shall, under this section, be exempted from assessment without the sanction of the Chief Commissioner.

Boundary-marks.

45. When any local area is under settlement, the Settlement-officer may order all persons who have proprietary rights in the land comprised in such area to erect boundary-marks of such description and at such places as he thinks necessary in order to define the limits of the mahals, fields or other lands in their possession, or to repair boundary-marks already existing ; and may fix a reasonable time for obeying his order ;

Erection of new, and repair of existing, boundary-marks.

and if his order is not obeyed within such time, may cause such marks to be erected or repaired under his own orders, and may recover the cost of such erection or repair from the persons against whom his order was made, in such proportion as he thinks fit.

CHAPTER V.

OF THE ASSESSMENT OF LAND-REVENUE.

46. On every mahál a definite and separate sum shall be assessed as land-revenue ; but the sum so assessed may be reduced in such manner and to such extent as the Chief Commissioner thinks fit, for any period not exceeding ten years from the date on which the assessment takes effect.

Separate sum to be assessed on every mahál.

Progressive assessments.

47. The Chief Commissioner may, from time to time, with the previous sanction of the Governor General in Council, give instructions to the Settlement-officer as to the principle on which land-revenue is to be assessed, and as to the sources of miscellaneous income to be taken into account in the assessment.

Matters as to which Chief Commissioner is to instruct Settlement-officer.

48. In assessing a mahál all land situate therein shall be taken into account except the following (that is to say) :—

What land taken into account in assessing mahál.

(*a*) land purchased free from revenue under any rules for the time being in force to regulate the sale of waste-lands ;

(*b*) land in respect of which the revenue has been redeemed under any rules for the time being in force ;

(*c*) land excluded from assessment under section forty-four ;

(*d*) land in respect of which a claim to hold it free from revenue as against the Government is established under the provisions hereinafter contained ;

(*e*) land which the Chief Commissioner, subject to the control of the Governor General in Council, may, from time to time, exempt from assessment.

49. The assessment of every mahál shall be offered to the entire proprietary body of such mahál : provided that, when superior and inferior proprietary rights co-exist in the same mahál, the Settlement-officer may, subject to such rules as the Chief Commissioner may make in this behalf, determine whether the assessment shall be offered to the superior or to the inferior proprietors.

Assessment to whom to be offered.

Subject to such rules as the Chief Commissioner may make in this behalf, the Settlement-officer may determine the manner and proportion in which the proprietary profits of the mahál shall be allotted between the superior and the inferior proprietors.

When a proprietor has mortgaged his rights in any mahál, and the mortgagee has entered into possession, such mortgagee, so long as he is in possession, shall, for the purposes of this section, stand in the place of the mortgagor.

50. When in a mahál in which superior and inferior proprietors co-exist, the Settlement-officer makes a settlement with the superior proprietors, he shall make on their behalf a sub-settlement with the inferior proprietors, by which such inferior proprietors shall be bound to pay to the superior proprietors an annual revenue equal to the land-revenue with which the mahal is assessed and to the profits to which the superior proprietors are entitled under section forty-nine.

Sub-settlement to be made with inferior proprietors when settlement is made with superior.

51. When in any such mahál the settlement is made with the inferior proprietors, the Settlement-officer may direct that the profits to which the superior

Power to give directions as to payment of certain profits of superior proprietors.

proprietors are entitled under section forty-nine, shall be paid by the inferior proprietors direct to such superior proprietors, or that such profits shall be collected as if they were land-revenue and shall be paid to the superior proprietors from the Government Treasury.

52. The Chief Commissioner may make rules prescribing the manner in which the Settlement-officer shall report for sanction his rates and method of assessment; and no assessment shall be offered without the previous sanction of the Chief Commissioner.

Power to make rules for reporting assessment for sanction.

53. In making any offer of assessment the Settlement-officer shall state that it is made subject to confirmation by the Governor General in Council, and also to revision by the Chief Commissioner at any time before such confirmation is received.

Offers of assessment to be made subject to revision and confirmation.

54. It shall be in the option of the persons to whom an assessment is offered to accept or refuse the same.

Option to accept or refuse assessment.

If they are willing to accept it, they shall make and sign an acceptance in writing, in such form as the Chief Commissioner may, from time to time, prescribe in this behalf, and deliver the same to the Settlement-officer.

Mode of acceptance.

55. Any proprietor who, within such reasonable period as may be specified by the Chief Commissioner, fails to make, sign and deliver such acceptance, or to inform the Settlement-officer that he refuses the proposed assessment, shall, if the Settlement-officer by an order in writing so directs, be deemed to have accepted such assessment.

Proprietor not accepting in manner prescribed may be deemed to have accepted.

56. Whenever the assessment of a mahál has been accepted under this Act, the persons who have accepted it shall be bound to pay the amount thereof from such date and for such term as the Chief Commissioner may appoint in this behalf, or, if at the expiry of that term no new assessment has been made and is ready to take effect, until a new assessment has been made and is ready to take effect: Provided as follows:—

Effect of acceptance of assessment.

1st—any assessment may be rescinded by the Chief Commissioner at any time before it has been confirmed by the Governor General in Council;

Assessment may be rescinded by Chief Commissioner;

2ndly—the Governor General in Council may rescind any assessment submitted to him for confirmation;

or by Governor General in Council.

3rdly—if all the málguzárs of a mahál, six months before the expiry of the term fixed under this section, apply in writing to the Deputy Commissioner stating that they are unwilling that the assessment should continue in force beyond the expiry of such term, the assessment shall, on the expiry of such term, cease to be in force.

Málguzárs may object to continuance of assessment beyond term of settlement.

57. Where there is but one class of proprietors in a mahál, and all refuse to accept in manner required by section fifty-four the assessment offered, the Settlement-officer may, with the previous sanction of the Chief Commissioner, exclude them from settlement for a period not exceeding thirty years from the date of such exclusion, and may either let the mahál in farm, or take it under direct management.

Procedure when assessment is refused.

58. If some of the proprietors consent, and some refuse, so to accept the assessment offered, the Settlement-officer may, with the previous sanction of the Chief Commissioner, if the interest of the recusant proprietors in the lands taken into account in the assessment consists entirely of lands held by them separately from the other proprietors, exclude such recusant proprietors from settlement for a period not exceeding thirty years from the date of such exclusion, and either let their lands in farm or take such lands under direct management.

Procedure when only some proprietors accept assessment.

In other cases the assessment of the entire mahál shall be offered to the proprietors who consented to accept the assessment when originally offered, and if they refuse it the mahál shall be dealt with under the provisions of section fifty-seven.

When the recusant proprietors are excluded under this section, the lands of the proprietors who consented to accept the assessment originally offered shall be deemed to be a separate mahál, and shall be assessed as such; and such assessment shall be offered to the proprietors so consenting; and if the lands of the recusant proprietors are let in farm, the farm shall be first offered to the proprietors who consented to accept the assessment originally offered.

59. When an assessment is offered in a mahál in which both superior and inferior proprietors co-exist—

Procedure on refusal of assessment in village in which superior and inferior rights co-exist.

(*a*) if all the proprietors of the class with which the Settlement-officer proposes to make the settlement refuse to accept as aforesaid the assessment offered, the assessment shall be offered to the proprietors of the other class; and if all such proprietors refuse the assessment, the Settlement-officer shall proceed as provided in section fifty-seven;

(*b*) if some only of the proprietors of the class with which the Settlement-officer proposes to make the settlement refuse the assessment, he may either proceed as if all had refused it or may deal with the mahál under section fifty-eight:

Provided that if, in the case contemplated by clause (*b*), the proprietors who consented to accept the assessment when originally offered refuse to accept it, such assessment shall be offered to the other class of proprietors.

60. If all or any of the inferior proprietors refuse any assessment offered under section fifty, the Settlement-officer may exclude them all from the sub-settlement, and assign the proprietary management and profits of the mahál to the superior proprietor for any term not exceeding the term of settlement.

Procedure on refusal of assessment by inferior proprietors.

61. Any proprietor excluded from settlement under section fifty-seven or section fifty-nine, clause (*a*), shall be entitled to receive from the Government an

Allowance to excluded proprietors.

annual allowance, the amount of which shall be fixed by the Chief Commissioner, but which shall not be less than five per cent., or more than ten per cent., on the amount of the assessment offered to him by the Settlement-officer.

62. Any proprietor excluded from settlement or sub-settlement under sections fifty-seven to sixty, both inclusive, shall be entitled to retain possession of his sír-land (if any) as if he were an absolute occupancy-tenant, and the rent to be paid by him for such land during the term of his exclusion shall be fixed by the Settlement-officer accordingly.

Excluded proprietors to have occupancy-rights in their sír-land.

63. The aggregate amount of any allowance under section sixty-one, and of the difference between the rent fixed under section sixty-two and the rent which the excluded proprietor would be liable to pay if he were a tenant-at-will, shall not be less than five or more than fifteen per cent. on the amount of the assessment offered to him by the Settlement-officer.

Aggregate amount of allowance granted to, and deduction from rent allowed to, excluded proprietor.

64. The Settlement-officer may make, on behalf of málik-makbúzás or other like holders of land, such a sub-settlement as shall secure to them from the málguzárs of the mahál their existing rights; and may provide that, in addition to the land-revenue payable by them, they shall pay to the málguzárs such percentage thereon, not exceeding twenty per cent., as may in his opinion be sufficient to compensate the said málguzárs for their responsibility in respect of the land-revenue, and to provide for the fees of lambardárs and mukaddams.

Sub-settlement with málik-makbúzás and other like holders of land.

65. The amount of revenue payable under a sub-settlement shall be a first charge upon all the land comprised in such sub-settlement.

Revenue payable under sub-settlement to be first charge on land.

66. When the whole of the land comprised in a mahál is held in severalty, the Settlement-officer shall apportion to the several holdings the amount with which such land is assessed under a settlement or sub-settlement.

Settlement-officer to apportion assessment over lands held in severalty;

When only part of the land comprised in a mahál is held in severalty, the Settlement-officer shall apportion such amount to the part held in common and the part held in severalty, and shall further apportion to the several holdings the amount to which they are liable under the former apportionment.

67. When by established custom the land held by each proprietor in any mahál is subject to periodical redistribution, the Settlement-officer may, in his discretion, on the application of the proprietors, make such redistribution according to such custom.

to redistribute land according to custom.

CHAPTER VI.

OF CERTAIN INVESTIGATIONS BY THE SETTLEMENT-OFFICER AND THE PREPARATION OF THE RECORD-OF-RIGHTS.

68. The Settlement-officer shall ascertain the persons who are in possession as proprietors of the land comprised in each mahál.

Settlement-officer to ascertain proprietors;

69. The Settlement-officer shall ascertain the situation and determine the extent of all the land held as sír in each mahál.

to determine extent of sír-land;

70. The Settlement-officer shall ascertain the customs or rules by which the proprietors in each mahál are mutually bound as to the granting of pattás, the ejectment of tenants, the realization and distribution of rents and other profits, the payment of land-revenue, village-expenses and other charges, and generally as to the control and management of the mahál; and shall decide all disputes and record all agreements regarding the matters mentioned in this section.

to decide disputes among shareholders regarding management of mahál;

71. The Settlement-officer shall determine through which of the lambardárs or sub-lambardárs the amount of revenue payable by each proprietor, sub-proprietor or málik-makbúzá shall be paid.

to determine through what lambardárs revenue shall be paid;

72. The Settlement-officer shall ascertain, and record for each mahál, the status of all tenants occupying land therein, the lands respectively held by them, the conditions on which they respectively hold such lands, and the rents (if any) payable by them respectively.

to ascertain status and rents of tenants.

73. The Settlement-officer shall investigate all claims against the Government to hold land free from revenue or at less than a full assessment, or to receive the whole or part of the land-revenue assessed on land which is not free from revenue.

Enquiry into claims to hold free from revenue as against Government.

The Chief Commissioner may, with the previous sanction of the Governor General in Council, make rules determining the principles by which the Settlement-officer shall be guided in the disposal of claims coming under this section.

Power of Chief Commissioner to make rules.

74. When any land not being land which any person is entitled to hold free from revenue as against the Government is held by a proprietor, whether himself a málguzár or not, who claims to hold it wholly or partially free from revenue as against the other málguzárs of the mahál, the Settlement-officer shall decide whether the claimant is entitled to be exempted from paying the whole or any part of the revenue which would otherwise be payable in respect of such land, and, if he decides that the claimant is so entitled, shall also determine the conditions under which, and the term for which, the claimant is entitled to such exemption:

Enquiry as to claims to hold free from revenue as against málguzárs.

Provided that no decision under this section shall exempt any land from the payment of revenue, when the mahál in which such land is comprised is sold for arrears of revenue.

The Chief Commissioner may make rules for the guidance of Settlement-officers in dealing with cases under this section.

Chief Commissioner may make rules for disposal of such cases.

75. When the Settlement-officer decides, under section seventy-three or section seventy-four, that land which has been held free from revenue, or at less than a full assessment, is

Time from which orders under sections 73 and 74 take effect.

liable to pay revenue, or to pay the same at enhanced rates, such decision shall take effect from the first day of the agricultural year next ensuing; unless the Chief Commissioner directs that the amount payable in respect of such land on account of the revenue accruing due within any one or more of the last preceding twelve years shall be realized.

Settlement-officer to decide what village-cesses are leviable;

76. The Settlement-officer shall determine and record the village-cesses, if any, which are leviable in accordance with village-custom, and the persons by and from whom, and the rates at which, they are leviable; and such cesses shall, if sanctioned by the Chief Commissioner, be leviable accordingly.

to determine certain disputes.

77. The Settlement-officer may determine disputes regarding any of the following matters (namely):—

(*a*) the right of any lambardár, mukaddam, patwárí, village-watchman or other village-servant to any customary dues, or other remuneration, and his liability to render any customary service in return for such dues or remuneration;

(*b*) the rights of persons resident in the village or holding lands comprised in the mahál, in or to the common land of the mahál and its produce, and the village-site;

(*c*) any customs relating to irrigation or to rights-of-way and other easements;

(*d*) any other rights and customs which the Chief Commissioner directs to be recorded in the administration-paper.

Procedure in cases under sections 68, 69, 70, 72 and 77, clauses (*b*), (*c*) and (*d*).

78. If a dispute arises regarding any matter mentioned or referred to in sections sixty-eight, sixty-nine, seventy, seventy-two and seventy-seven, clauses (*b*), (*c*) and (*d*), the Settlement-officer shall decide it summarily after making such enquiry as he thinks fit, and shall not be bound to hear any party to such dispute or to receive any evidence tendered by any such party; but in the case of every such dispute he shall record a proceeding stating the nature of such dispute, his decision thereon, the grounds of such decision and such other particulars as he thinks fit.

Record-of-rights.

79. The Settlement-officer shall prepare for every mahál, or, if he thinks fit, for any group of neighbouring mahals, a record-of-rights, and shall include in it—

(*a*) the results of the inquiries made under this chapter in respect of such mahál or group; and

(*b*) any other matters which the Chief Commissioner may, by rules in this behalf, direct to be entered in such paper.

Chief Commissioner may make rules regarding record-of-rights.

80. The Chief Commissioner may make rules prescribing the language in which the record-of-rights shall be drawn up, the form of the papers of which it shall consist, and the manner in which such papers shall be signed and attested by the Settlement-officer and the parties interested in the matters to which they refer.

Record-of-rights to be made over to Deputy Commissioner.

81. When the Settlement-officer has completed a record-of-rights in manner hereinbefore prescribed, he shall, subject to any order issued by the Chief Commissioner in this behalf, make it over to the Deputy Commissioner for custody.

Effect of entries in record-of-rights.

82. When the record-of-rights is duly made and attested, all entries therein shall be presumed to be correct until the contrary is shown.

Suits to contest certain settlement decisions or entries.

83. Any person deeming himself aggrieved by any decision under section seventy-eight, or by any decision of the Chief Settlement-officer in appeal therefrom, or by any entry made in the record-of-rights as to any matter referred to in that section, may institute a suit in the Civil Court to have such decision set aside or such entry cancelled or amended:

Provided as follows:—

When any suit under this section is instituted for the cancellation or amendment of an entry, the Government, if it so desires, and all persons interested in the entry, shall be made parties to the suit:

No persons by whom the record-of-rights was signed, and no persons claiming through or under them shall, without the previous sanction of the Chief Commissioner, institute any suit with a view to modify or set aside any entry relating to any matter mentioned in section seventy or section seventy-seven, clause (*b*), (*c*) or (*d*).

Revision of record-of-rights by Chief Commissioner.

84. After an assessment has been confirmed by the Governor General in Council, the Chief Commissioner shall not exercise in respect of any entry of the descriptions referred to in section eighty-three duly made in a record-of-rights prepared in connection with such assessment and duly attested, the power of revision conferred by sections twenty-five and thirty-one, unless it is proved that such entry was made inadvertently.

Proceedings regarding lands the property of Government.

85. In respect of lands declared to be the property of Government, the Settlement-officer shall, instead of proceeding as hereinbefore provided, conduct such operations, and prepare such record, as the Chief Commissioner may direct.

CHAPTER VII.

OF SETTLEMENTS MADE BEFORE THIS ACT COMES INTO FORCE.

Former settlements deemed to have been made under this Act.

86. Settlements made before this Act comes into force shall be deemed, so far as may be, to have been made hereunder; and the provisions of this Act in regard to proceedings taken and records prepared by Settlement-officers in the making of settlements hereunder shall apply in like manner to proceedings taken and records prepared before this Act comes into force.

Effect of awards of proprietary rights at such settlements.

87. When a Settlement-officer or Settlement Court has, at any settlement made before this Act comes into force, made an award of proprietary rights in any land, all claims which after consideration by such officer or Court may have been expressly decided by him or it to be invalid, or inferior to the claims of the persons in whose favour the award was made, shall be barred both as against Government and as against the persons last mentioned; and no suit shall lie for the enforcement of such claims in any Civil Court.

The award at any such settlement of proprietary rights in land to a widow shall be deemed to confer on her those rights only which, in accordance with the personal law to which she is subject, she would enjoy in land inherited by her from her husband.

When suits for proprietary rights will lie in Civil Courts.

88. Any person whose claim to proprietary rights in any land was not expressly decided by such officer or Court may sue in a Civil Court to establish such claim; and if he can prove that, when proprietary rights in such land were awarded by such officer or Court to other persons, he was entitled to interests therein of the same nature as those upon consideration of which the award was made, the Civil Court may declare him entitled to a proprietary right of such nature and extent in the land as it may deem just.

Chief Commissioner may allot waste-land to málik-makbúzás entitled thereto.

89. When at any settlement made before this Act comes into force málik-makbúzás have been declared entitled to a portion of the waste-lands comprised in any mahál, the Chief Commissioner may, notwithstanding anything contained in the record of such settlement, prescribe the extent of such portion and the mode in which the same shall be assigned to them; and may determine the nature and extent of their interests therein and the conditions on which they may hold it.

PART IV.

OF REVENUE-ADMINISTRATION.

CHAPTER VIII.

OF THE COLLECTION OF LAND-REVENUE.

Power of Chief Commissioner to regulate payment of land-revenue.

90. Notwithstanding anything contained in the record-of-rights of any village, the Chief Commissioner may fix the number and amount of the instalments, and the times, places and manner at and in which land-revenue, whether payable direct to the Government or not, shall be paid.

Until the Chief Commissioner otherwise directs, all such payments shall be made on the dates, in the instalments, in the manner and at the places on, in and at which they are payable when this Act comes into force.

"Arrear."
"Defaulters."

91. When any sum payable under a settlement or sub-settlement is not paid within the time at which it is payable under section ninety, such sum shall be deemed to be an arrear; and all the persons with whom such settlement or sub-settlement was made, their representatives and assigns, shall thereupon become jointly and severally liable for it, and shall be deemed to be defaulters within the meaning of this Act.

Realization of Revenue from Málguzárs.

Tahsíldár's statement of account to be conclusive evidence of arrear.

92. A statement of account, authenticated by the signature of the Tahsíldár, shall, for the purposes of this chapter, be conclusive evidence of the existence of any arrear payable direct to the Government, of its amount, and of the persons who in respect thereof are defaulters.

Notice of demand.

93. The Deputy Commissioner or any officer empowered by him in this behalf may, if he thinks fit, before any of the processes hereinafter referred to are issued for the recovery of such an arrear, cause a notice of demand to be served on any of the defaulters.

Processes for recovery of arrears.

94. An arrear payable directly to Government may be recovered by any one or more of the following processes:—

(*a*) by arresting the defaulter and imprisoning him in the civil jáil;

(*b*) by attaching and selling his moveable property;

(*c*) by attaching the mahál in respect of which the arrear has accrued or the share or land of any málguzár who has not paid the portion of the revenue which, as between him and the other málguzárs, is payable by him, and taking the same mahál, share or land under direct management;

(*d*) by transferring the share or land of any málguzár who has not paid such portion to any málguzár who has paid the same, or if every such málguzár declines to accept such share or land, to any person having a mortgage or charge upon the same, and who consents to accept it;

(*e*) by annulling the settlement of the mahál in respect of which the arrear has accrued, and taking such mahál under direct management or farming the same;

(*f*) by selling such mahál, or the share or land of any málguzár who has not paid the portion of the revenue aforesaid;

(*g*) by selling immoveable property belonging to the defaulter other than the land in respect of which the arrear has accrued:

Provided as follows:—

(1) the process mentioned in clause (*a*) shall not be issued against any female, minor, lunatic or idiot;

(2) the processes mentioned in clauses (*d*), (*e*), (*f*) and (*g*) shall not be enforced without the previous sanction of the Chief Commissioner;

(3) no land shall be sold, and the settlement of no land shall be annulled, on account of an arrear accruing in respect of land whilst it is under attachment, or under charge of the Superintendent of Government Wards, or held under direct management, or let in farm in accordance with any of the provisions of this Act.

The processes specified in clauses (*a*), (*b*) and (*g*) may be enforced either in the district in which the default has been made, or in any other district.

Arrest and imprisonment for recovery of arrear.

95. The process mentioned in section ninety-four, clause (*a*), may be executed by issuing a warrant directing the officer named therein, if the defaulter fails to pay the arrear by a date to be fixed in the warrant, to bring him to the tahsíl.

If, when the defaulter arrives at the tahsíl, the arrear is still unpaid, the Tahsíldár may order him to be taken before the Deputy Commissioner, or may keep him under personal restraint at the

tahsíl for a period not exceeding ten days, unless within such period the arrear is paid, and may then, if the arrear is still unpaid, cause him to be taken before the Deputy Commissioner.

96. If the arrear is not paid when the defaulter arrives before the Deputy Commissioner, the Deputy Commissioner may issue an order to the officer in charge of the civil jail of the district, directing him to confine the defaulter in such jail for such period, not exceeding three months from the date of the order, as the Deputy Commissioner may think fit, unless within such period the arrear is paid.

Imprisonment of defaulter in civil jail.

97. Attachments and sales of moveable property made under this chapter shall be conducted as nearly as may be according to the law for the time being in force for the attachment and sale of moveable property under the decree of a Civil Court.

Procedure in sales of moveable property.

98. After causing any attachment to be made under section ninety-four, clause (*c*), the Deputy Commissioner shall issue a proclamation declaring the attachment to be in force, and shall take the attached mahál, share or land under his own management, or place it under the management of any agent whom he may appoint for the purpose.

Management of mahál, share or land attached under section 94 (*c*).

99. During the continuance of an attachment under section ninety-eight, the defaulters shall be excluded from possession of the land attached, and the Deputy Commissioner or the agent appointed by him shall have all their rights to manage the land and to realize the rents and profits arising therefrom, and shall be bound by all their liabilities as málguzárs or proprietors to any subordinate proprietors or tenants of such land.

Effect of attachment.

100. The surplus profits of such land, after defraying the cost of attachment and management, shall be applied, first, to the payment of any revenue becoming due in respect of such land during the attachment; and next, to discharging the arrear for the recovery of which the attachment was made.

Profits of land how applied.

101. The attachment shall continue until the arrear is paid or realized from the profits of the land attached, or the Deputy Commissioner reinstates the defaulters in possession:

Attachment when to cease.

Provided that no attachment shall continue beyond five years from the first day of the agricultural year next following its commencement.

102. When it is proposed to execute the process mentioned in section ninety-four, clause (*d*), the persons to whom the share or land in respect of which the arrear is due is to be transferred shall be required to pay such arrear, or to secure its payment to the satisfaction of the Deputy Commissioner.

Transfer under section 94 (*d*).

No such transfer shall be made for a term exceeding fifteen years from the first day of the agricultural year next after the date on which it is sanctioned by the Chief Commissioner.

No proceedings taken under this section shall affect the joint and several liability of the málguzárs of the mahál for arrears accruing in respect of such mahál subsequently to the transfer of the share or land except that, as regards all such arrears, the transferee shall stand in the place of the málguzár whose share or land is transferred.

Joint and several liability not affected by transfer.

103. When the Chief Commissioner sanctions the annulment of the settlement of any mahál, the Deputy Commissioner shall proclaim such annulment, and may then exclude the defaulters from the possession of the mahál, and either manage the mahál or any portion thereof himself or through an agent, or let the mahál or any portion thereof in farm for such term and on such conditions as the Chief Commissioner directs:

Procedure after receipt of sanction to annulment of settlement.

Provided that no management or farm under this section shall continue for a longer period than fifteen years from the first day of the agricultural year next after the proclamation of annulment of settlement.

After the date of such proclamation no liabilities shall accrue under the settlement so annulled; but such annulment shall not affect anything done or any liability incurred under the settlement before such date.

104. When a portion only of the mahál is managed or let in farm under section one hundred and three, the rest of such mahál shall be separately resettled with the proprietors thereof for the remainder of the term of settlement.

Case of a portion of a mahál being managed or farmed.

105. As soon as the management or farm of any mahál or portion thereof has come to an end, the Deputy Commissioner shall offer to the persons entitled under section forty-nine to an offer of assessment a new assessment of the land, on such conditions as the Chief Commissioner may direct, for the remainder of the term of the settlement of the mahál; and, if such offer is refused, may, with the previous sanction of the Chief Commissioner, let such mahál or portion in farm for the remainder of the term of settlement to some other person, or manage it himself or through an agent for such period.

Settlement on expiry of management or farm.

106. No leases, liens or other incumbrances created by the defaulters, or by any person through or under whom they claim, of, or upon any land managed or let in farm under this Act, shall, during such management or farm, be binding upon the Deputy Commissioner or Settlement-officer, his agent or lessee.

Effect of annulment of settlement.

107. No defaulter shall be deprived of the possession of his sír-land in the execution of any of the processes mentioned in section ninety-four, clauses (*c*), (*d*) and (*e*); but every such defaulter shall, while such process is being enforced, be entitled to retain possession of, and liable to pay rent for, such land as if he were an absolute occupancy-tenant, at such rent as may be fixed by the Deputy Commissioner.

Saving of rights in sír-land.

108. Unless the Chief Commissioner in sanctioning the sale otherwise directs, a purchaser of any land sold for arrears of revenue due in respect thereof acquires the full proprietorship or superior or inferior proprietorship of it, as the case may be, free of all leases, liens and other incumbrances; and all grants or contracts previously made by any person other than the purchaser in respect of such land shall become void as against such purchaser.

Nature of estate taken by purchaser of land sold for arrears due thereon.

Nothing in this section shall—

(*a*) affect the rights of any proprietor superior or inferior to the defaulters or of any málik-makbúzá or occupancy-tenant who does not derive his rights as such proprietor, málik-makbúzá or tenant from express contract with such defaulters, or any person through whom they claim; or

(*b*) apply to lands held under leases at fair rents for the erection thereon of dwelling-houses, places of worship or manufactories, or for working mines, minerals, coals and quarries, or for laying out and maintaining gardens and burial-grounds, or for constructing tanks and canals, so long as the lands continue to be used for the purposes specified in such leases respectively; or

(*c*) deprive any defaulter whose property is sold of the rights in respect to his sír-land conferred by any law for the time being in force.

The Chief Commissioner may, from time to time, determine what rents shall be deemed to be fair rents within the meaning of this section.

109. When immoveable property is sold under this Act, the rules prescribed in sections 287, 288, 293 and 306 to 316, both inclusive, of the Code of Civil Procedure shall be followed, except in the following particulars (that is to say):—

Rules for sale of immoveable property.

(*a*) 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 on such payment the sale shall be stayed.

(*b*) The proclamation directed by the said section 287 shall, when the sale is under clause (*f*), section ninety-four of this Act, declare that, subject to the provisions of section one hundred and eight, the full proprietorship, or superior or inferior proprietorship, as the case may be, is to be sold free from all leases, liens and other incumbrances, and the certificate mentioned in section 316 of the said Code shall contain a similar statement.

(*c*) The last two clauses of the said section 287 shall not apply.

(*d*) An appeal from any order under section 312 of the said Code for confirming or setting aside the sale shall lie to the Commissioner of the Division, and an appeal from the Commissioner's order on such appeal shall lie to the Chief Commissioner.

(*e*) The Deputy Commissioner may, from time to time, postpone any sale which he has proclaimed, reporting such postponement to the Commissioner of the Division.

(*f*) Section 309 of the said Code shall be read as if, after the words "for such payment," the words "and every sale of such property made after a postponement" were added.

(*g*) Section 313 of the said Code shall not apply to sales under section ninety-four, clause (*f*), of this Act.

(*h*) Section 316 of the said Code shall be read as if the words "The Deputy Commissioner shall place the purchaser in possession of the lands which he has purchased" were added thereto.

110. In the course of a sale under section ninety-four, clause (*f*), if the property is knocked down to a stranger, the following persons may claim to take it at the sum last bid in the following order:—

Pre-emption at sales.

(*a*) any málguzár who has paid the revenue which as between him and the other málguzárs is payable by him;

(*b*) if the superior proprietorship is sold, the inferior proprietor;

(*c*) if the inferior proprietorship is sold, the superior proprietor:

Provided that such claim is made before the officer conducting the sale closes the sitting at which the sale is held, and that the claimant undertakes to fulfil all the conditions of the sale binding on the purchaser.

111. The proceeds of every sale in execution of any process mentioned in section ninety-four shall be applied, first, in satisfaction of the arrear on account of which the sale was held, and of the expenses of such sale; secondly, to the payment of any other arrear due to Government by the defaulter; and the surplus, if any, shall then be payable to him, or, where there are more defaulters than one, to such defaulters according to their respective shares in the property sold.

Application of proceeds of sale of immoveable property.

112. The costs of serving a notice of demand under section ninety-three and of enforcing any process mentioned in section ninety-four shall be recoverable as part of the arrear in respect of which the notice was served and the process was issued.

Costs recoverable as part of arrear.

113. The Chief Commissioner may make rules—

Matters as to which Chief Commissioner may make rules.

(*a*) for the guidance of Revenue-officers in issuing notices of demand under section ninety-three and executing the processes mentioned in section ninety-four;

(*b*) defining the classes of officers by whom the processes mentioned in section ninety-four, clauses (*a*) and (*b*), may be enforced;

(*c*) prescribing the agency by which any of the processes issued under section ninety-four shall be executed.

114. Notwithstanding anything contained in section ninety-two, when proceedings are taken under this Act for the recovery of an arrear, the person against whom such proceedings are taken may, if he denies that the arrear or any part thereof is due,

Remedies open to person denying that sum demanded as an arrear is due.

pay the same under protest made at the time of payment and duly signed by him or by his agent, and institute a suit in the Civil Court for the recovery of the amount which he denies to be due.

Realization of Revenue by Málguzárs.

Limitation of right to set-off, &c., in suit for arrears.

115. In a suit for the recovery of an arrear of revenue not being revenue payable directly to Government, and in a suit brought by a lambardár to recover the amount of any revenue payable to Government through him, the defendant shall not, except with the permission of the Court,—

(*a*) set-off against the plaintiff's demand any sum of money recoverable by him from the plaintiff; or

(*b*) claim credit for any payment purporting to have been made on account when such payment was made before the date on which the amount thereof became due.

Recovery of arrear through Deputy Commissioner instead of by suit.

116. Any lambardár or sub-lambardár entitled to recover an arrear, or any málguzár to whom such an arrear is due under a sub-settlement, may, before instituting a suit for the recovery thereof, apply to the Deputy Commissioner to recover such arrear on his behalf as if it were an arrear of revenue payable directly to Government.

The Deputy Commissioner may, if he thinks fit, comply with such application, but shall, before compliance therewith, give to the persons who would be defendants if a suit were instituted for the recovery of such arrear, opportunity to show cause against the order which he proposes to make.

The Deputy Commissioner shall not be made a defendant to any suit instituted under section one hundred and fourteen in respect of an arrear as to which an order has been made under this section.

No person on whose account the Deputy Commissioner proceeds under this section to recover an arrear shall thereby be relieved of his responsibility for such arrear.

Saving of right of málguzár to demand revenue of land assessed to revenue and held free.

117. Nothing in the Indian Limitation Act, 1877, and no agreement made after this Act comes into force, shall bar the right of the málguzárs of any mahál assessed with land-revenue to demand revenue in respect of any land which, having been taken into account in such assessment, has been held by any person without payment of revenue.

The Chief Commissioner may, in his discretion, exempt any case from the operation of this section.

Limitation in suits for revenue.

118. No suit for the recovery of revenue payable under a settlement or sub-settlement shall be instituted after three years reckoned from the date on which such revenue becomes payable.

In other respects the limitation of such suits shall be governed by the Indian Limitation Act, 1877.

Interest on Arrears.

Interest on arrears.

119. Interest shall not be charged on an arrear of revenue unless the Chief Commissioner, by general or special order, so directs; provided that the Court may award interest at such rate as it thinks fit on sums payable under a sub-settlement.

CHAPTER IX.

OF REVENUE AND VILLAGE RECORDS.

Correction of record-of-rights.

120. Any entry in the record-of-rights may, after such record has been made over to the Deputy Commissioner, be corrected by the Deputy Commissioner on the application of any person interested, or of his own motion. Such correction may be made on one or more of the following grounds and on no others:—

(*a*) that all persons interested in such entry wish to have it corrected; or

(*b*) that by a decree in a suit brought under section eighty-three it has been declared to be erroneous; or

(*c*) that, being founded on a decree or order of a Civil Court, or on the order of a Revenue or Settlement officer, it is not in accordance with such decree or order; or

(*d*) that, being founded on such decree or order, the order or decision has subsequently been modified on appeal or review, or has been revised by the Chief Commissioner.

Revision of record in accordance with provision therein contained.

121. The Deputy Commissioner may revise a record-of-rights when such revision is provided for in such record.

Powers of Deputy Commissioner as to correction of entry or revision of record.

122. When the Deputy Commissioner takes proceedings for the correction of any entry in the record-of-rights or for the revision of such record-of-rights, he shall exercise, for the purpose of such correction or revision, all the powers which the Chief Settlement-officer might have exercised if the proceedings had been taken whilst the settlement was in progress.

Power to direct that rule or custom entered in record-of-rights shall be enforced by Government.

123. The Chief Commissioner may, in his discretion, by notification in the official Gazette, direct that any specified rule, custom or condition duly entered in the record-of-rights of any specified village shall be enforced by the Government.

Punishment of violation of such rule or custom.

If any of the persons with whom a settlement or sub-settlement has been made, violate or neglect any rule, custom or condition with respect to which the Chief Commissioner has made a direction under this section, the Deputy Commissioner may, if no penalty is provided by any law for the time being in force for such violation or neglect, recover from such person a penalty not exceeding two hundred rupees.

Suit to set aside proceedings under section 123.

124. Any person against whom proceedings have been taken under section one hundred and twenty-three may institute a suit against Government to set aside such proceedings on the ground that no rule, custom or condition was, in fact, violated or neglected. If the Court finds that no rule, custom or condition has been violated or neglected, it may by its order annul such proceedings, and direct that any penalty paid by the plaintiff be refunded; and may also award to him such costs as he has necessarily incurred in the proceedings, and such further sum as compensation as it thinks fit.

Powers of Chief Commissioner as to registration of changes after preparation of record-of-rights.

125. The Chief Commissioner may—

(*a*) direct that the mukaddam of each village shall, for the purpose of showing the changes occurring therein subsequently to the preparation of the record-of-rights, prepare, or, where there is a patwárí, cause to be prepared, and furnish, annually for such village, papers in such form, at such time, containing such particulars, and attested in such manner, as the Chief Commissioner may, from time to time, prescribe;

(*b*) lay down the procedure to be followed in order to ascertain that a change has occurred in the village, and the nature of such change.

All changes referred to in this section shall be recorded in such registers as the Chief Commissioner appoints, and not in the record-of-rights, and the Chief Commissioner may direct that, before any specified changes are recorded, the order of a specified Revenue-officer shall be obtained in this behalf.

Possession of proprietary rights to be notified.

126. All persons lawfully entering into possession of proprietary rights and interests in any land shall, within a reasonable time, give notice of such entry to the Tahsíldár of the tahsíl in which such land is situated.

If any question arises whether any right or interest is a proprietary right or interest within the meaning of this section, the decision thereof by the Chief Commissioner shall be final.

Notice to be given by guardian in case of minority or idiotcy.

If the person so entering is a minor, lunatic or idiot, the guardian or other person who has charge of his property shall give the notice required by this section.

Fine for neglect to give notice of possession.

127. Any person neglecting to give the notice required by section one hundred and twenty-six shall be liable, at the discretion of the Deputy Commissioner or Assistant Commissioner, to fine which may extend to fifty rupees for each day during which such neglect continues.

Obligation to aid in preparation of village-papers.

128. All persons being in possession of proprietary rights in land shall, on being so required by the Deputy Commissioner, prepare, or cause to be prepared, such papers, and furnish such information, as may be required for the preparation of the village-papers prescribed under section one hundred and twenty-five.

Fee for recording changes.

129. The Chief Commissioner may direct that fees shall be leviable when changes are recorded under the last clause of section one hundred and twenty-five, and may fix the amount of such fees.

All fees so leviable shall be levied from the person in whose favour the change is made.

Annual enquiry regarding land held free from revenue.

130. The Deputy Commissioner shall in each year make enquiry regarding all cases in which land has been granted by Government, conditionally or for a time, free, wholly or in part, from the payment of revenue.

Procedure on breach of conditions of grant.

If it appears to the Deputy Commissioner that the conditions of any grant have been broken by the grantee, he shall report the case through the Commissioner of the Division for the orders of the Chief Commissioner, who may direct that the land be assessed, or may pass such other order as he thinks fit.

Procedure on expiry of term of grant.

If it appears to the Deputy Commissioner that the term of any such grant has expired, or (when the grant is for a life or lives) if the person last entitled to hold the land comprised in the grant, free from revenue, or at less than full revenue-rates, has died, he shall assess the same, and shall report his proceedings through the Commissioner of the Division for the sanction of the Chief Commissioner.

Inspection of revenue-records.

131. All records kept under this Act shall be open to public inspection at such times, and on such conditions as to fees or otherwise, as the Chief Commissioner from time to time directs.

CHAPTER X.

OF CERTAIN ADDITIONAL POWERS AND FUNCTIONS OF REVENUE-OFFICERS.

Purposes for which, when settlement is not in progress, Deputy Commissioner shall exercise Settlement officers' powers.

132. The Deputy Commissioner shall, when a settlement is not in progress, exercise the powers conferred by this Act on Settlement-officers for the following purposes:—

(*a*) causing boundary-marks to be erected or repaired, and recovering the cost of such erection and repair;

(*b*) assessing land-revenue on lands which are liable to assessment, but have not been assessed;

(*c*) declaring any local area to be a mahál;

(*d*) settling lands from which the proprietors were excluded at settlement and to which they have been or are about to be readmitted;

(*e*) settling mahals in respect of which an application has been made under the third proviso to section fifty-six;

(*f*) dealing with claims to hold land wholly or partially free from revenue as against the málguzárs;

(*g*) assessing lands gained by alluvion;

(*h*) ascertaining and recording village-cesses which are levied when this Act comes into force, but have not been recorded at the settlement.

Purposes for which officers may be invested with Settlement-officers' powers.

133. The Chief Commissioner may, during the currency of a settlement, invest any officer with the powers conferred on a Settlement-officer by sections forty, forty-one and forty-two; or,

with the sanction of the Governor General in Council, with any other of the powers which are by this Act conferred on a Settlement-officer; but not so as to enable him to enhance the amount of an assessment in force under section fifty-six.

Cognizance of, and penalty for, offence of injuring boundary-marks.

134. Any person wilfully erasing, removing or damaging a boundary-mark may be ordered by the Deputy Commissioner or by a Tahsíldár or Náib Tahsíldár empowered by the Chief Commissioner in this behalf to pay to the officer making the order, in addition to any fine to which such person would be liable under section 434 of the Indian Penal Code, such sum, not exceeding fifty rupees, as may in the opinion of such officer be necessary to defray the expense of restoring the same, and of rewarding the person (if any) who gave information of such erasure, removal or damage.

Procedure when person injuring cannot be found.

135. Whenever the person erasing, removing or damaging such mark cannot be discovered, or if for any other reason it is found impracticable to recover from him the sum which he has been ordered to pay, the mark shall be re-erected or repaired at the cost of the proprietors, mortgagees or farmers of such one or more of the adjoining lands as the Deputy Commissioner thinks fit.

Partition of a mahál into two maháls.

136. Any málguzárs of a mahál who are not co-sharers with the other málguzárs of such mahál in any lands comprised in such mahál, except such lands as are under the law relating to partition for the time being in force indivisible, may apply to the Deputy Commissioner to make the lands held by them separately from such other málguzárs a separate mahál; and the Deputy Commissioner shall thereupon make such lands and the lands held separately by the remaining málguzárs separate maháls, and shall, with the previous sanction of the Commissioner, apportion between the two new maháls thus constituted the entire revenue assessed upon the original mahál.

CHAPTER XI.

VILLAGE-OFFICERS AND PATWÁRIS.

Power to make rules as to officers.

137. The Chief Commissioner may make rules regulating the appointment, remuneration, suspension and removal of lambardárs, sub-lambardárs and mukaddams:

Provided that, except with the previous sanction of the Governor General in Council, proprietors, other than málik-makbúzás, shall not be liable to pay, on account of the aggregate remuneration of lambardárs or sub-lambardárs and mukaddams, a sum exceeding five per cent. on the land-revenue which is assessed on their land, or which, when their land is free from revenue, would, in the judgment of the Deputy Commissioner, be assessed on their land if it were subject to assessment.

In framing rules for the appointment under this section of lambardárs and sub-lambardárs for any mahál, the Chief Commissioner shall have regard among other matters to local custom and hereditary claims, and to entries on the subject in the record-of-rights of such mahál.

In every village in which there are resident málguzárs, one of such málguzárs shall be the mukaddam.

Duties of lambardárs.

138. It shall be the duty of every lambardár and sub-lambardár—

(*a*) to collect and pay into the Government Treasury so much of the land-revenue as may under section seventy-one be payable through him, either solely or jointly with other lambardárs or sub-lambardárs;

(*b*) to collect and pay to the mukaddam, or into the Government Treasury, as the Deputy Commissioner may direct, all sums of money payable through him, either solely or jointly with other lambardárs or sub-lambardárs, by the proprietors whom he represents, on account of the remuneration of the mukaddam, patwárís or village-watchmen, or on account of any expenses which the mukaddam is authorized to recover from the lambardárs or sub-lambardárs of his village;

(*c*) to assist the mukaddam in obtaining all particulars which he is bound to enter in the annual village-papers, or to report under this Act.

Lambardárs may recover fees and other charges from proprietors.

139. Together with the land-revenue, lambardárs and sub-lambardárs may recover from the proprietors whom they respectively represent—

(*a*) any remuneration to which they are entitled as such; and

(*b*) the sum which, under section one hundred and thirty-eight, they are bound to pay to mukaddams:

Provided that no such recovery shall be made from málik-makbúzás paying a percentage which includes remuneration to mukaddams and lambardárs.

Deputy Commissioner may alter channel through which málik-makbúzá pays revenue.

140. On the application of any málik-makbúzá or other like holder of land, or of the lambardár or sub-lambardár through whom such málik-makbúzá or other holder of land pays the revenue assessed on his holding, the Deputy Commissioner may, for sufficient cause shown, order that such revenue be paid through any other lambardár or sub-lambardár, or that it be paid into the Government Treasury.

Effect of order for payment of revenue direct to Government.

When the Deputy Commissioner orders such payment to be made into the Government Treasury, such portion of the percentage fixed under section sixty-four as the Deputy Commissioner, subject to the control of the Chief Commissioner, may determine, shall be so paid, and the málik-makbúzá or other person shall pay the rest to the mukaddams on account of their fees and the other village-expenses.

Duties of mukaddams.

141. It shall be the duty of every mukaddam—

(*a*) to control and superintend the village-patwárí and village-watchmen; to report their deaths or absence from duty; to maintain them in the possession of any lands appertaining to their office; to recover and pay to them any cash allowances to which they may be entitled; and to take such steps as may be necessary to compel them to perform their duties;

(*b*) to furnish reports regarding the state of his village, at such places and times as the Deputy Commissioner fixes in this behalf;

(*c*) to report and, if possible, to prevent encroachments on the public paths and roadways in his village;

(*d*) to preserve such stations and marks erected in his village by Government-surveyors as may be made over to his care;

(*e*) subject to any rules issued by the Chief Commissioner, to keep his village in good sanitary condition;

(*f*) to report violations of any rules which the Chief Commissioner may make for the preservation of underwood, forests and trees growing on the village-lands, and for securing to persons entitled to cut wood and enjoy other privileges in the waste-lands of the village the rights to which they are entitled;

(*g*) to collect, or aid in the collection of, all payments due to Government in his village;

(*h*) to report all births and deaths taking place in his village.

The Chief Commissioner may make rules—

(1) adding to the list of duties which a mukaddam is required to perform under this section; and

(2) regulating the liability of persons residing in any village for charges necessarily incurred by mukaddams in the performance of the duties specified in clause (*e*) in respect of such village, and for apportioning such charges among such persons; and

(3) determining the officers to whom reports under this section shall be made.

Liabilities imposed by law on landholders to attach to mukaddams.

142. When, by any enactment for the time being in force, any public duties are imposed on, or public liabilities are declared to attach to, landholders, their managers and agents and the like, such duties shall be deemed to be imposed on, and such liabilities shall be held to attach to, mukaddams appointed under this Act:

Provided that nothing herein contained shall discharge landholders, their managers or agents, or the like, from any liabilities imposed upon them by law.

Power of mukaddams to recover certain expenses incurred.

143. Every mukaddam may recover from the lambardárs or sub-lambardárs of the village to which he is appointed his own remuneration, together with any expenses necessarily incurred in the performance of his duties.

Chief Commissioner may make rules as to patwárís.

144. The Chief Commissioner may make rules—

(*a*) regulating the manner in which patwárís are to be selected; prescribing the conditions under which they may be appointed; and fixing the limits of their circles and the nature, mode and amount of their remuneration;

(*b*) prescribing the conditions under which substitutes may be appointed for persons having hereditary claims to the office of patwárí, when such persons are unable to act;

(*c*) prescribing the fines which may be imposed on patwárís and their substitutes for neglect of their duty, and stating the circumstances under which they may be suspended or removed:

Provided that, except with the previous sanction of the Governor General in Council, no proprietor shall be compelled to pay as remuneration to patwárís a sum exceeding six per cent. on the revenue for the time being assessed on his land, or which, when his land is free from revenue, would, in the judgment of the Deputy Commissioner, be assessable on his land if it were liable to assessment.

Chief Commissioner may make rules for guidance of Deputy Commissioners in certain matters.

145. The Chief Commissioner may make rules for the guidance of Deputy Commissioners in dealing with cases where, at the time of making the settlement next before this Act comes into force, the maintenance of a patwárí was made optional, and the persons settled with are unable to agree as to whether a patwárí should be maintained, and for dealing with cases where no patwárí is, under such option, maintained and the mukaddams or proprietors have made default in the performance of the duties of a patwárí.

Such rules may empower the Deputy Commissioner, in the latter class of cases—

(*a*) to impose fines not exceeding fifty rupees on such mukaddams or proprietors, and therefrom to make provision for the temporary performance of the duties in respect of which they have made default;

(*b*) to appoint patwárís in the villages of such proprietors, either for the term of the settlement or for any shorter term, and to fix the remuneration of such patwárís.

Nothing in the proviso to section one hundred and forty-four shall apply to patwárís so appointed.

Chief Commissioner may define duties of patwárís.

146. The Chief Commissioner may make rules prescribing the duties of patwárís—

(*a*) towards the Government; and may in such rules determine the registers, returns or other papers which they shall keep or furnish, the forms and language in which such registers and returns are to be prepared, the mode of their preparation and attestation, and the dates on which they are to be furnished;

(*b*) towards the members of the village-community; and may in such rules fix the remuneration, if any, other than the fixed emoluments of their office, which the patwárís may demand in respect of the performance of such duties.

Patwárís' papers to be public documents.

All records and papers which patwárís are required to prepare or keep by any rule made by the Chief Commissioner under this section shall be deemed to be public documents within the meaning of the Indian Evidence Act, 1872, and to be the property of Government.

Patwárís to produce papers for inspection, and to allow copies to be made.

147. Patwárís shall produce at all reasonable times, for the inspection of all persons interested therein, all records and papers which they are so required to prepare or keep, and shall allow such persons to make copies of such records and papers.

148. All existing lambardárs, sub-lambardárs, mukaddams and patwáris shall, unless the Chief Commissioner in any specified case otherwise directs, be deemed to have been appointed under this Act.

Existing officers confirmed.

149. Any sums which lambardárs, sub-lambardárs, mukaddams and patwáris are entitled to recover or demand under this chapter may, if the Deputy Commissioner so directs, be recovered in the same manner as an arrear of revenue payable directly to the Government.

Lambardárs' and other officers' dues recoverable as arrears.

150. In each village of the district of Sambalpúr all persons holding sír-land, other than mukaddams, are bound to provide for the due remuneration of the mukaddam of the village; and the Chief Commissioner may make rules for the enforcement of this obligation.

Holders of sír-land in Sambalpúr to provide for remuneration of mukaddams.

PART V.

CHAPTER XII.

MISCELLANEOUS.

151. Unless it is otherwise expressly provided in the records of a settlement or by the terms of a grant made by the Government, the right to all mines, minerals, coals and quarries, and to all fisheries in navigable rivers, and the right to extract sap from all palmyra and cocoanut trees, shall be deemed to belong to Government; and the Government shall have all powers necessary for the proper enjoyment of such rights:

Right to mines and quarries.

Provided that, whenever in the exercise by the Government of the rights herein referred to over any land, the rights of any persons are infringed by the occupation or disturbance of the surface of such land, the Government shall pay to such persons compensation for such infringement, and the amount of such compensation shall be determined as nearly as may be in accordance with the provisions of the Land Acquisition Act, 1870.

152. Except as otherwise hereinbefore provided,—

Exclusive jurisdiction of Revenue-authorities.

(*a*) no Civil Court shall entertain any suit instituted, or application made, to obtain a decision or order on any matter which the Governor General in Council, the Chief Commissioner or a Revenue or Settlement officer is, by this Act, empowered to determine or dispose of; and in particular

Matters excepted from jurisdiction of Civil Courts.

(*b*) no Civil Court shall exercise jurisdiction over any of the following matters:—

(1) any matters provided for in sections forty, forty-one, forty-two and eighty-nine, as to waste-lands:

(2) the claim of any person to have an assessment offered to, or sub-settlement made with, him:

(3) the amount of revenue or rate to be assessed on any mahál, share or portion of a mahál under this or any other Act for the time being in force:

(4) questions as to the validity of any engagement with Government for the payment of land-revenue, or of any agreement entered into by superior or inferior proprietors in a settlement or sub-settlement:

(5) claims connected with or arising out of any process enforced on account of refusal to accept the assessment offered in a settlement or sub-settlement by the Settlement-officer or Deputy Commissioner:

(6) the amount of the allowance or rent fixed under section sixty-one or sixty-two:

(7) the redistribution according to established custom, by a Settlement-officer, of land comprised in a mahál:

(8) the formation of the record-of-rights,

the preparation, signing or attestation of any of the documents contained therein, or

the notification of settlement:

(9) any matters provided for or referred to in section seventy-three, seventy-four or one hundred and thirty as to lands held or claimed to be held free from revenue, except rights arising under any contract between the Government of India and grantees of land:

(10) claims connected with, or arising out of, the collection of revenue, or any process enforced on account of an arrear of revenue, or on account of any sum which is under this or any other Act realizable as revenue:

(11) claims to set aside, on any ground other than fraud, sales for arrears of revenue:

(12) corrections of entries or revisions of records under sections one hundred and twenty, one hundred and twenty-one and one hundred and twenty-two:

(13) claims to have a partition and apportionment made under section one hundred and thirty-six, and questions as to the distribution or apportionment under that section of the land or of the revenue of a mahál:

(14) claims to the office of patwári, lambardár, sub-lambardár or mukaddam, or in respect of any injury caused by exclusion therefrom, or to compel the performance of the duties thereof:

(15) claims to compel the performance of any duties imposed by this Act on any Revenue or Settlement officer.

In all the above cases jurisdiction shall rest with the Revenue-authorities only.

153. No suit shall lie in any Civil or Revenue Court for the recovery of any village-cess which has not been sanctioned by the Chief Commissioner and also either recorded at a settlement or under section one hundred and thirty-two, clause (*b*).

For what village-cesses suit lies.

154. Whenever, at any settlement made before this Act comes into force, waste-lands have been demarcated as the property of Government, no claim of any person to, or in respect of, such lands shall be entertained by any Civil Court after the expiration of three years from the date of such demarcation.

Limitation of claims for compensation in case of waste-land demarcated as property of Government.

155. No Revenue or Settlement officer, and no person employed in any Revenue or Settlement office, shall, except with the express permission of the Chief Commissioner,—

Restriction on Revenue and Settlement officers trading and holding land.

(*a*) engage in trade, or be in any way concerned, directly or indirectly, in any commercial transaction, or in the purchase or hiring of land, in the district to which he is appointed, or in which he is employed;

(*b*) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property which may be sold by order of any Revenue-authority in such district.

The Chief Commissioner may delegate to Commissioners of Divisions or to Deputy Commissioners the power of granting the permission mentioned in this section in the case of any specified class of officers.

Nothing in this section shall be deemed to preclude any person from becoming a member of a company incorporated under the Indian Companies Act, 1866.

156. When any mahál is managed or let in farm under section fifty-seven or fifty-eight, or when either of the proclamations mentioned in sections ninety-eight and one hundred and three has been made, all sums due to the proprietor in respect of the mahál, share or land mentioned in any of the said sections shall be payable only to the Deputy Commissioner or Settlement-officer, his agent or lessee; and no payment made to such proprietor in anticipation of the usual period for such payment shall, without the sanction of the Deputy Commissioner or Settlement-officer, be credited to the person making the same in account with the Deputy Commissioner or Settlement-officer, his agent or lessee.

When mahál managed or farmed, or upon proclamation under section 98 or 103, rent payable to Deputy Commissioner.

Payment to proprietor in anticipation of due date.

157. When any land has been let in farm under the provisions of this Act, any revenue due from the farmer in respect of such land may be recovered from him or his surety as an arrear of revenue payable directly to Government.

Recovery of balances due by farmers.

158. All land-revenue due when this Act comes into force, and all penalties or other moneys payable to, or recoverable by, an officer of Government under this Act, shall be recovered from the persons from whom they are due and from the sureties (if any) of such persons as if such land-revenue, penalties or moneys were an arrear of revenue payable directly to Government due under this Act by such persons and their sureties.

Recovery of revenue due when Act comes into force; and of moneys payable under Act.

159. All proceedings taken before this Act comes into force for the collection of the land-revenue or the realization of arrears thereof shall be deemed to have been taken in accordance with law.

Past proceedings for collection of revenue legalized.

160. In conferring powers under this Act the Chief Commissioner may empower persons by name or classes of officials generally by their official titles.

Chief Commissioner may empower persons by name, or confer powers on classes.

161. The Chief Commissioner may vary or cancel any order conferring powers under this Act.

Chief Commissioner may vary or cancel orders.

162. The Chief Commissioner may, with the previous sanction of the Governor General in Council, make rules consistent with this Act for carrying out its provisions, and may attach to the breach of any such rule, or of any other rule made by him under this Act, a penalty which may extend to two hundred rupees, or, when such breach is a continuing breach, to fifty rupees for each day during which such breach continues.

Chief Commissioner may make rules and attach penalty to breach thereof.

All powers to make rules conferred by this Act on the Chief Commissioner shall be exercised subject to the control of the Governor General in Council, and may be exercised from time to time as occasion requires.

No rule made by the Chief Commissioner under this Act shall take effect until it has been published in the local official Gazette.

All such rules, when so published, shall have the force of law.

SCHEDULE.

(*See section 2.*)

ENACTMENTS REPEALED.

Number and year.	Title.	Extent of repeal.
Act XII of 1841.	For amending the Bengal Code in regard to sales of land for arrears of revenue.	So much as has not been already repealed.
Act I of 1847	For the establishment and maintenance of boundary-marks in the North-Western Provinces of Bengal.	The whole.
Act XXXI of 1858.	To make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal.	The whole.

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PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 31st August, 1881, and is hereby promulgated for general information:—

ACT No. XIX OF 1881.

THE BURMA FOREST ACT, 1881.

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SCHEDULE.—ENACTMENTS REPEALED.

An Act to amend the law relating to Forests, Forest-produce, and the duty leviable on Timber in British Burma.

WHEREAS it is expedient to amend the law relating to forests, forest-produce, and the duty leviable on timber in British Burma; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Burma Forest Act, 1881": Short title.

It extends to all the territories for the time being administered by the Chief Commissioner of British Burma, provided that the Chief Commissioner may, by notification in the official Gazette, exempt any place from its operation; but not so as to affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings Local extent.

commenced in such place before such exemption; and

it shall come into force on such day as the Chief Commissioner may, by notification in the official Gazette, direct. Commencement.

2. On and from such day the enactments and rules mentioned in the schedule hereto annexed shall be repealed to the extent mentioned in the third column of the same schedule. Repeal of enactments.

3. In this Act, and in all rules made hereunder, unless there is something repugnant in the subject or context,— Interpretation-clause.

"Forest-officer" means all persons appointed by name or as holding an office by or under the orders of the Governor General in Council or the Chief Commissioner to be— "Forest-officer."

Conservators, Deputy Conservators, Assistant Conservators, Sub-Assistant Conservators, Forest-rangers, Foresters, or Forest-guards, or to discharge any function of a Forest-officer under this Act or any rule made hereunder:

"tree" includes also bamboos, stumps and brushwood: "tree":

"timber" includes trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed out for any purpose or not: "timber":

"forest-produce" includes the following things when found in, or brought from a forest (that is to say):— "forest-produce."

minerals (including limestone and laterite), surface-soil, trees, timber, plants, grass, peat, canes, creepers, reeds, leaves, moss, flowers, fruits, seeds, roots, juice, catechu, bark, caoutchouc, gum, wood-oil, resin, varnish, lac, charcoal, honey and wax;

"forest-offence" means an offence punishable under this Act or any rule made hereunder: "forest-offence":

"cattle" includes also elephants, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids: "cattle":

"river" includes also streams, canals, creeks and other channels, natural or artificial: "river":

"land at the disposal of Government" means "land at the disposal of Government."

(*a*) land in respect of which no person has acquired the status of a land-holder under section seven of the Burma Land and Revenue Act, 1876,

(*b*) land in respect of which no person has acquired any right created by grant or lease made by, or on behalf of, the British Government.

"Magistrate" means a Magistrate of the first or second class and includes a Magistrate of the third class when he is specially empowered by the Chief Commissioner to try forest-offences. "Magistrate."

4. Nothing in the Burma Land and Revenue Act, 1876, shall be deemed to affect or ever to have affected any right by which one person is entitled to remove and appropriate, for his own profit, any part of the soil belonging to another person or to the Government, or anything growing in, or attached to, or subsisting upon, the land of another person or of the Government. Saving of rights of profit from the Burma Land and Revenue Act, 1876.

CHAPTER II.

OF RESERVED FORESTS.

5. The Chief Commissioner may constitute any land at the disposal of Government, a reserved forest in manner hereinafter provided. Power to reserve forests.

6. Whenever it is proposed to constitute any land a reserved forest, the Chief Commissioner shall publish a notification in the official Gazette— Notification by Chief Commissioner.

(*a*) specifying as nearly as possible the situation and limits of such land;

(*b*) declaring that it is proposed to constitute such land a reserved forest;

(*c*) appointing an officer (hereinafter called "the Forest-Settlement-officer") to inquire into and determine the existence, nature and extent of any rights claimed by, or alleged to exist in favor of, any person in or over any land comprised within such limits, and any claims relating to the practice within such limits of toungya cultivation, and to deal with the same as provided in this chapter.

The officer appointed under clause (*c*) of this section shall ordinarily be a person other than a Forest-officer; but a Forest-officer may be appointed by the Chief Commissioner to assist the Forest-Settlement-officer in the inquiry prescribed by this chapter.

7. When a notification has been published under section six, the Forest-Settlement-officer shall publish in the language of the country, at the head-quarters of each township in which any portion of the land comprised in such notification is situate, and in every town and village in the neighbourhood of such land, a proclamation— Proclamation by Forest-Settlement-officer.

(*a*) specifying as nearly as possible the situation and limits of the proposed forest;

(*b*) setting forth the substance of the provisions of section eight;

(*c*) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and

(*d*) fixing a period of not less than three months from the date of publishing such proclamation, and requiring every person claiming any right or making any claim referred to or mentioned in section six either to present to such officer within such period a written notice specifying, or to appear before him within such period and state, the nature of such right or claim.

8. During the interval between the publication of such proclamation and the date fixed by the notification declaring the forest to be reserved as hereinafter provided, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by, or on behalf of, the Government or some person in whom such right, or power to create the same, was vested when the Bar of accrual of forest-rights.

Prohibition of building, clearing, &c.

proclamation was published; and, on such land, no new house shall be built or plantation formed, no fresh clearings for cultivation or for any other purpose shall be made, and no trees shall be cut for the purpose of trade or manufacture, except as hereinafter provided.

Nothing in this section shall be deemed to prohibit any act done with the permission in writing of the Forest-Settlement-officer, or any clearings lawfully made for toungya cultivation by persons in the habit of practicing such cultivation on such land.

Inquiry by Forest-Settlement-officer.

9. The Forest-Settlement-officer shall take down in writing all statements made under section seven, and shall inquire into all claims made under that section, and the existence of any right or practice mentioned in section six in respect of which no claim is made. The Forest-Settlement-officer shall at the same time consider and record any objection which the Forest-officer (if any), appointed under section six to assist him, may make to any such claim or to the existence of any such right or practice.

Powers of Forest-Settlement-officer.

10. For the purposes of such inquiry, the Forest-Settlement-officer may exercise the following powers (that is to say):—

(*a*) the powers of a demarcation-officer under The Burma Boundaries Act, 1880; and

(*b*) the powers conferred on a Civil Court by the Code of Civil Procedure for compelling the attendance of witnesses and the production of documents.

Claims relating to practice of toungya cultivation how dealt with.

11. In the case of a claim relating to the practice of toungya cultivation, the Forest-Settlement-officer shall pass an order specifying the particulars of such claim and permitting, or refusing to permit, such practice wholly or in part.

If such practice is permitted wholly or in part, the Forest-Settlement-officer may—

(*a*) alter the limits of the proposed reserved forest so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants; or

(*b*) cause certain portions of the reserved forest to be separately demarcated, and give permission to the claimants to practice toungya cultivation under such rules and conditions as he may prescribe.

No right to practice toungya cultivation shall be deemed to be conferred by an order under this section permitting such practice, and, except with the sanction of the Chief Commissioner, such cultivation shall only be practiced by the person to whom such permission is granted.

Power to acquire land over which right is claimed.

12. In the case of a claim to a right in or over any land other than the following rights:—

(*a*) a right of way,

(*b*) a right to a water-course, and to use of water,

(*c*) a right of pasture, or to forest-produce,

the Forest-Settlement-officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part.

If such claim is admitted wholly or in part, the Forest-Settlement-officer may (1) come to an agreement with the claimant for the surrender of the right; or, (2) exclude the land from the limits of the proposed forest; or, (3) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1870.

For the purpose of so acquiring such land—

(i) the Forest-Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1870;

(ii) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section nine of that Act;

(iii) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and

(iv) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

Order on claims to rights of way, water-course, pasture, and to forest-produce.

13. In the case of a claim to rights of the kind specified in clauses (*a*), (*b*) and (*c*) of section twelve, the Forest-Settlement-officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part.

When a claim to any such right is admitted, if the right is for the beneficial enjoyment of any land or buildings, he shall record the designation, position and area of such land, and the designation and position of such buildings.

Where the right is a right to forest-produce, he shall also record whether the forest-produce obtained by the exercise of such right may be sold or bartered, and such other particulars as may be necessary in order to define the nature, incidents and extent of the right.

Provision for rights of pasture or to forest-produce admitted.

14. When the Forest-Settlement-officer has admitted wholly or in part, and recorded under section thirteen, a claim to a right of pasture or to forest-produce, he shall as far as possible provide for the exercise of such right—

(*a*) by altering the limits of the proposed reserved forest so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimant;

(*b*) by recording an order continuing to the claimant a right of pasture or to forest-produce (as the case may be), subject to such rules as may be prescribed by the Chief Commissioner.

The order passed under clause (*b*) shall record, as far as practicable, the number and description of the cattle which the claimant is from time to time entitled to graze, the local limits within which, and the seasons during which, such pasture is permitted; or

the quantity of timber or other forest-produce which the claimant is authorized to take or receive, the local limits within which, the season during which, and the mode in which, the taking of such produce is permitted; and

such other particulars as may be required in order to define the extent of the right which is continued, and the mode in which it may be exercised.

Commutation of such rights.

15. Whenever any right of pasture or to forest-produce admitted under section thirteen is not provided for in one of the ways prescribed in section fourteen, the Forest-Settlement-officer shall, subject to such rules as the Chief Commissioner may prescribe in this behalf, commute such right by paying a sum of money in lieu thereof, or, with the consent of the claimant, by the grant of land, or in such other manner as such officer thinks fit.

For the purpose of granting land under this section, the Forest-Settlement-officer shall be deemed to be an Assistant Commissioner in charge of a sub-division.

Appeal from order passed under foregoing sections.

16. Any person who has made a claim under this chapter may, within three months from the date of any order passed on such claim by the Forest-Settlement-officer under section eleven, twelve, thirteen, fourteen or fifteen, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Deputy Commissioner, as the Chief Commissioner may, by notification in the official Gazette, appoint by name, or as holding an office, to hear appeals from such orders.

Appeal under section 16.

17. Every appeal under section sixteen shall be made by petition in writing, and may be delivered to the Forest-Settlement-officer, who shall forward it without delay to the officer competent to hear the same.

Hearing of appeals.

Every such appeal shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue, and the order passed thereon by such officer shall be final, except as hereinafter provided.

Notification declaring forest reserved.

18. When the following events have occurred (namely):—

(*a*) the period fixed under section seven for preferring claims has elapsed, and all claims (if any) made within such period have been disposed of by the Forest-Settlement-officer, and

(*b*) if such claims have been made, the period fixed by section sixteen for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer, and

(*c*) all lands (if any) to be included in the proposed forest, which the Forest-Settlement-officer has, under section twelve, elected to acquire under the Land Acquisition Act, 1870, have become vested in the Government under section sixteen of that Act,

the Chief Commissioner may publish a notification in the official Gazette, specifying the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date fixed by such notification.

From the date so fixed, such forest shall be deemed to be a reserved forest.

Extinction of rights not claimed.

19. Rights in respect of which no claim has been preferred under section seven, and of the existence of which no knowledge has been acquired by enquiry under section nine, shall thereupon be extinguished, unless, before the publication of such notification, the person claiming them has satisfied the Forest-Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section seven.

Publication of translation of such notification in neighbourhood of forest.

20. The Deputy Commissioner of the district in which the forest is situate shall, before the date fixed by such notification, cause a translation thereof in the language of the country to be published in the manner prescribed for the proclamation under section seven.

Power to revise arrangement made under section 11, 14 or 17.

21. The Chief Commissioner may, within five years from the publication of any notification under section eighteen, revise any arrangement made under section eleven, fourteen or seventeen, and may rescind or modify any order made under this chapter, and direct that any one of the proceedings specified in section fourteen be taken in lieu of any other of such proceedings, or that the permission granted under section eleven or rights admitted under section thirteen be commuted under section fifteen.

No right acquired over reserved forest except as here provided.

22. No right of any description shall be acquired in or over a reserved forest, except by succession, or under a grant or contract in writing made by, or on behalf of, the Government, or some person in whom such right, or the power to create such right, was vested when the notification under section eighteen was published.

Rights not to be alienated without sanction.

23. Notwithstanding anything herein contained, no right continued under section fourteen shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the Chief Commissioner: provided that, when any such right is continued for the beneficial enjoyment of any land or house, it may be sold or otherwise alienated with such land or house without such sanction.

No timber or other forest-produce obtained in exercise of any right so continued shall be sold or bartered except to the extent defined by the order recorded under section fourteen.

Power to stop ways and water-courses in reserved forest.

24. Any Forest-officer may, from time to time, with the previous sanction of the Chief Commissioner or of any officer duly authorized in that behalf, stop any public or private way or water-course in a reserved forest: provided that for the way or water-course so stopped, another way or water-course which in the opinion of the Chief Commissioner is equally convenient, already exists, or has been provided or constructed by such Forest-officer.

Penalties for trespass or damage in reserved forests.

25. Any person who in a reserved forest—

(*a*) trespasses, or pastures cattle, or permits cattle to trespass,

(*b*) causes any damage by negligence in felling any tree or cutting or dragging any timber,

(*c*) strips off the bark or leaves from or otherwise damages any tree,

(*d*) in contravention of any rules made by the Chief Commissioner, hunts, shoots, fishes, poisons water, or sets traps or snares,

shall be punished with fine which may extend to fifty rupees, or when the damage resulting from his offence amounts to more than twenty-five rupees, to double the amount of such damage.

Acts prohibited in such forests.

26. Any person who—

(*a*) makes any fresh clearing prohibited by section eight, or

(*b*) sets fire to a reserved forest, or kindles any fire or, in contravention of any rules made by the Chief Commissioner, leaves any fire burning in such manner as to endanger the same,

or who, in a reserved forest,

(*c*) kindles, keeps or carries any fire except at such seasons and in such manner as a Forest-officer specially empowered in this behalf may from time to time notify,

(*d*) fells, girdles, lops, taps, or burns any tree,

(*e*) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce,

(*f*) clears or breaks up any land for cultivation or any other purpose,

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

Acts excepted from prohibition contained in sections 25 and 26.

27. Nothing in section twenty-five or section twenty-six shall be deemed to prohibit (*a*) any act done in accordance with any rule made by the Chief Commissioner or with the permission in writing of a Forest-officer, specially empowered to grant such permission; or (*b*) any practice of toungya cultivation permitted under section eleven; or (*c*) the exercise of any right continued under section fourteen or created by grant or contract in the manner described in section twenty-two.

Penalty for offences committed by persons having rights in reserved forests.

28. Whenever fire is caused wilfully or by gross negligence in a reserved forest by any person having rights in such forest, or having permission to practice toungya cultivation therein, or by any person in his employment, or whenever any person having rights in such forest contravenes the provisions of section twenty-three, the Chief Commissioner may (notwithstanding that a penalty has been inflicted under section twenty-six in respect of such fire) direct that in such forest or any specified portion thereof the exercise of all or any of the rights of pasture or to forest-produce shall be extinguished or suspended for such period as he thinks fit, and may withdraw any permission to practice toungya cultivation in such forest or portion.

Power to declare forest no longer reserved.

29. The Chief Commissioner may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be reserved.

From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

Forests reserved under former rules.

30. Any forest which has been declared a reserved forest under any rules in force previous to the day on which this Act comes into force shall be deemed to have been reserved hereunder;

and all questions decided, orders issued and records prepared in connection with the reservation of such forest shall be deemed to have been decided, issued and prepared hereunder, and all provisions of this Act relating to reserved forests shall apply to such forest.

CHAPTER III.

OF VILLAGE-FORESTS.

Constitution of village-forests.

31. The Chief Commissioner may by notification in the official Gazette constitute any land at the disposal of Government a village-forest for the benefit of any village-community or group of village-communities, and may in like manner vary or cancel any such notification.

Every such notification shall specify the limits of such village-forest.

Teak trees in village-forest the property of Government.

32. All teak trees in a village-forest shall be deemed to be the property of Government; and no person shall cut, mark, lop, girdle, or injure by fire or otherwise, any such trees without the permission in writing of a Forest-officer specially empowered to grant such permission.

Power to make rules for village-forests.

33. The Chief Commissioner may make rules for regulating the management of village-forests, prescribing the conditions under which the community or group of communities for the benefit of which any such forest is constituted may be provided with timber or other forest-produce or with pasture, and their duties in respect of the protection and improvement of such forest.

The Chief Commissioner may, by such rules, declare any of the provisions of Chapter II of this Act to be applicable to village-forests.

Saving of private rights.

34. Nothing in this chapter shall be deemed to affect any existing rights of any person in or over any village-forest.

Power to inquire into and deal with such rights.

The Chief Commissioner may in any case direct that all claims to any such rights, other than the rights of the village-community or group of village communities for the benefit of which such village-forest is constituted, shall be inquired into, recorded and provided for in the manner prescribed by Chapter II of this Act.

CHAPTER IV.

OF THE PROTECTION OF CERTAIN TREES AND NATURAL PRODUCE.

Reserved trees.

35. All teak trees standing on any land not included in a reserved or village-forest shall be deemed to be the property of Government and shall be reserved trees.

The Chief Commissioner may by notification in the official Gazette—

(*a*) declare that any other trees or any specified class of other trees standing on any land at the disposal of Government shall, from a date to be fixed by such notification, be reserved trees;

(*b*) vary or cancel any such notification;

(*c*) declare that any teak trees standing on land other than land at the disposal of Government shall, from a date to be fixed by such notification, cease to be the property of Government and to be reserved trees.

Protection of reserved trees.

36. No person shall cut, mark, lop, girdle, tap, or injure by fire or otherwise, any reserved tree, except as provided by rules made by the Chief Commissioner in this behalf, or with the permission in writing of a Forest-officer specially empowered to grant such permission.

Whoever cuts, marks, lops, girdles, taps, or injures by fire or otherwise, any reserved tree in contravention of this section shall be punished with fine which may extend to twenty rupees, or when the damage resulting from his offence amounts to more than ten rupees, to double the amount of such damage.

Power to make rules generally.

37. No person shall make use of the pasturage or of the natural produce of any land at the disposal of Government and not included in a reserved or village-forest, except in accordance with rules which may be prescribed by the Chief Commissioner. Such rules may, with respect to such land,—

(*a*) regulate or prohibit the cutting of toungyas, or the issue of grants or leases by Government with respect to land on which teak trees are growing;

(*b*) regulate or prohibit the kindling of fires, and prescribe the precautions to be taken to prevent the spreading of fires;

(*c*) regulate or prohibit the cutting, sawing, conversion and removal of trees and timber, and the collection and removal of natural produce;

(*d*) regulate or prohibit the quarrying of stone, the boiling of catch, or the burning of lime or charcoal;

(*e*) regulate or prohibit the cutting of grass and pasturing of cattle, and regulate the payments (if any) to be made for such cutting or pasturing;

(*f*) regulate or prohibit hunting, shooting, fishing, poisoning water and setting traps or snares;

(*g*) regulate the sale or free grant of timber or other natural produce; and

(*h*) prescribe, or authorize any Forest-officer to prescribe, subject to the control of the Chief Commissioner, the fees, royalties or other payments for such timber or other natural produce, and the manner in which such fees, royalties or other payments shall be levied, whether in transit, or partly in transit, or otherwise.

Penalties for acts in contravention of rules.

The Chief Commissioner may, by such rules, prescribe, as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

The Chief Commissioner may exempt any person or class of persons or any local area from the operation of any such rule, and may cancel such exemption.

Nothing in this chapter to prohibit acts done in certain cases.

38. Nothing in this chapter or in any rule made under this chapter shall be deemed to prohibit any act done with the permission in writing of a Forest-officer specially empowered to grant such permission, or in the exercise of any right.

CHAPTER V.

OF THE DUTY ON TIMBER.

Power to impose duty on timber.

39. The Chief Commissioner may levy a duty, in such manner, at such places, and at such rates, as he may prescribe by notification in the official Gazette, on all timber which is brought into British Burma from any place beyond the frontier of British Burma.

Power to fix value for *ad valorem* duty.

In every case in which such duty is directed to be levied *ad valorem*, the Chief Commissioner may, by like notification, fix the value on which such duty shall be assessed.

Duty on certain timber floated down the Attaran.

40. On all teak timber cut within the limits of the Attaran Forest and floated down the Attaran river, duty shall be levied at the following rates, that is to say:—

	Rs.	A.	P.	
On logs above five feet in girth ...	4	0	0	per log.
Ditto below „ „ ...	2	0	0	„
On stem pieces	0	9	0	per piece.
On ship crooks	0	4	0	per crook.

These rates shall not apply to timber for which special rates have been fixed by any agreement entered into with Government.

Power to exempt timber from duty.

41. The Chief Commissioner may exempt any timber from the duty to which it is liable under section thirty-nine or section forty, and revoke such exemption.

Provisions of chapter not to limit purchase-money or royalty.

42. Nothing in this chapter shall be deemed to limit the amount (if any) chargeable as purchase-money or royalty on any timber.

CHAPTER VI.

OF THE CONTROL OF TIMBER IN TRANSIT.

Power to make rules to regulate transit of timber.

43. The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber in transit by land or water, is vested in the Chief Commissioner, and he may make rules to regulate the transit of all timber.

Such rules may (among other matters)—

(*a*) prescribe the routes by which alone timber may be imported into, exported from, or moved within, British Burma;

(*b*) prohibit the import and export or moving of such timber without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass;

(*c*) provide for the issue, production and return of such passes;

(*d*) fix, or authorize any Forest-officer to fix, subject to the control of the Chief Commissioner, the fees payable for such passes;

(*e*) in the case of timber formed into a raft or fastened to the shore, prohibit the loosening or the setting adrift of such timber by any person not the owner thereof, or not acting on behalf of such owner or of the Government;

(*f*) provide for the stoppage, reporting, examination and marking of timber in transit in respect of which there is reason to believe that any money is payable to Government or to which it is desirable, for the purposes of this Act, to affix a mark;

(*g*) establish, or authorize any Forest-officer to establish, subject to the control of the Chief Commissioner, stations to which such timber shall be taken by those in charge of it for examination, or for the realization of such money, or in order that such mark may be affixed to it; and the conditions under which such timber shall be brought to, stored at, and removed from, such station;

(*h*) provide for the management and control of such stations, and for regulating the appointment and duties of persons employed thereat;

(*i*) authorize the transport of timber the property of Government across any land, and regulate the compensation to be paid for any damage done by the transport of such timber;

(*j*) prohibit the closing up or obstruction of the channel or banks of any river used for the transit of timber, and the throwing of grass, brushwood, branches and leaves into any such river, or any other act which tends to cause the obstruction of such channel;

(*k*) provide for the prevention and removal of any obstruction in the channel or on the banks of any such river, and for recovering the cost of such prevention or removal, from the person, or by the sale of any timber, causing such obstruction;

(*l*) prohibit absolutely, or subject to conditions within specified local limits, the establishment of sawpits, the converting, cutting, burning, concealing, marking or supermarking of timber, the altering or effacing of any marks on the same, and possession or carrying of marking-hammers or other implements used for marking timber;

(*m*) regulate the use of property-marks for timber, and the registration of such marks; declare the circumstances in which the registration of any property-marks may be refused or cancelled; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

44. The Chief Commissioner may, by such rules, prescribe, as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

Penalties for breach of rules made under section 43.

In cases where the offence is committed after sunset and before sunrise, or after making preparation for resistance to the execution of any law or any legal process, or where the offender has been previously convicted of a like offence, the convicting Magistrate may inflict double the penalty prescribed for such offence.

45. In case of any accident or emergency involving danger to any property at any such station, every person employed at such station, whether by the Government or by any private person, shall render assistance to any Forest-officer or Police-officer demanding his aid in averting such danger and securing such property from damage or loss.

All persons bound to aid in case of accident at station.

CHAPTER VII.

OF THE COLLECTION OF DRIFT, STRANDED AND OTHER TIMBER.

46. All timber found adrift, beached, stranded or sunk,

all timber bearing marks which have not been registered under rules made under section forty-three,

all timber which has been supermarked, or on which the marks have been obliterated, altered or defaced by fire or otherwise, and

in such areas as the Chief Commissioner directs, all unmarked timber,

shall be deemed to be the property of Government unless and until any person establishes his right thereto as provided in this chapter.

Certain kinds of timber to be deemed property of Government until title thereto proved.

Such timber may be collected by any Forest-officer or other person entitled to collect the same, and may be brought to such stations as a Forest-officer specially empowered in this behalf may from time to time notify as stations for the reception of drift-timber.

Power to collect the same.

The Chief Commissioner may, by notification in the official Gazette, exempt any class of timber from the provisions of this section, and withdraw such exemption.

47. Public notice shall from time to time, as occasion may require, be given by a Forest-officer specially empowered in this behalf of timber collected under section forty-six. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than one month from the date on which such notice is given, a written statement of such claim.

Notice to claimants of drift-timber.

48. When any such statement is presented as aforesaid, the Forest-officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

Procedure on claim preferred to such timber.

If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Court and retain the timber pending the receipt of an order from such Court for its disposal.

Any person whose claim has been rejected under this section may, within two months from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation against the Government or against any Forest-officer on account of such rejection, or the

On rejection of claim to such timber, claimant may institute suit.

detention or removal of any timber, or the delivery thereof to any other person under this section.

No such timber shall be subject to process of any Civil Court until it has been delivered, or a suit brought under this section has been decided.

49. If no statement is presented in the manner and within the period prescribed by the notice issued under section forty-seven, or, where such statement having been so presented and the claim having been rejected, the claimant omits to institute a suit to recover possession of such timber within the further period mentioned in section forty-eight, the ownership of such timber shall vest in the Government free from all incumbrances; or, when such timber has been delivered to another person under section forty-eight, in such other person, free from all incumbrances not created by him.

Disposal of unclaimed timber.

50. No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer, or other person entitled to receive it, such sum on account thereof as may be due for salving, collecting, moving, storing and disposing of the same.

Payments to be made by claimant before timber is delivered to him.

51. The Chief Commissioner may make rules to regulate the following matters (namely):—

Power to make rules and prescribe penalties.

(*a*) the salving, collection and disposal of all timber mentioned in section forty-six;

(*b*) the use and registration of boats used in salving and collecting timber;

(*c*) the amount to be paid for salving, collecting, moving, storing and disposing of such timber; and

(*d*) the use and registration of hammers and other instruments to be used for marking such timber.

The Chief Commissioner may, by such rules, prescribe, as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

CHAPTER VIII.

PENALTIES AND PROCEDURE.

52. When there is reason to believe that a forest-offence has been committed in respect of any timber or forest-produce, such timber or produce, together with all tools, boats, carts and cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.

Seizure of property liable to confiscation.

Every officer seizing any property under this section shall place on such property, or the receptacle (if any) in which it is contained, a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Report to Magistrate.

Provided that when the timber or forest-produce with respect to which such offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

53. Upon the receipt of any such report, the Magistrate shall take such measures as may be necessary for the trial of the accused and the disposal of the property according to law.

Procedure thereupon.

54. When any person is convicted of a forest-offence, all timber or forest-produce in respect of which such offence has been committed, and all tools, boats, carts and cattle used in committing such offence, shall be liable, by order of the convicting Magistrate, to confiscation.

Timber, forest-produce, tools, &c., when liable to confiscation.

Such confiscation may be in addition to any other punishment prescribed for such offence.

55. When the trial of any forest-offence is concluded, any timber or forest-produce in respect of which such offence has been committed shall, if it is the property of Government, or has been confiscated, be taken possession of by a Forest-officer specially empowered in this behalf; and in any other case may be disposed of in such manner as the Court may order.

Disposal, on conclusion of trial for forest-offence, of produce in respect of which it was committed.

56. When the offender is not known or cannot be found, the Magistrate enquiring into the offence, if he finds that an offence has been committed, may, on application in this behalf, order the property in respect of which the offence has been committed to be confiscated and taken possession of by a Forest-officer specially empowered in this behalf, or to be made over to such Forest-officer or other person as the Magistrate considers entitled to the same:

Procedure when offender not known or cannot be found.

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

The Magistrate shall either cause a notice of any application under this section to be served upon any person whom he has reason to believe is interested in the property seized, or shall publish such notice in any way which he thinks fit.

57. The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section fifty-two and subject to speedy and natural decay, and may deal with the proceeds as he might have dealt with such property if it had not been sold.

Procedure as to perishable property seized under section 52.

58. Any person claiming to be interested in property seized under section fifty-two may, within one month from the date of any order passed under section fifty-four, section fifty-five or section fifty-six, present an appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

Appeal from orders under sections 54, 55 and 56.

59. When an order for the confiscation of any property has been passed under section fifty-four or fifty-six, and the period limited by section fifty-eight for presenting an appeal

Property when to vest in Government.

from such order has elapsed, and no such appeal has been presented, or when, on such an appeal being presented, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or portion, as the case may be, shall vest in the Government free from all incumbrances.

Saving of power to release property seized.

60. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Chief Commissioner from directing at any time the immediate release of any property seized under section fifty-two and the withdrawal of any charge made in respect of such property.

Punishment for wrongful seizure.

61. Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Any fine so imposed, or any portion thereof, shall, if the convicting Magistrate so direct, be given as compensation to the person aggrieved by such seizure.

Penalty for counterfeiting or defacing marks in trees and timber and for altering boundary-marks.

62. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code—

(*a*) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person, or

(*b*) unlawfully affixes to any timber or standing tree a mark used by Forest-officers, or

(*c*) alters, defaces or obliterates any such mark placed on any timber or standing tree by or under the authority of a Forest-officer, or

(*d*) alters, moves, destroys or defaces any boundary-mark of any forest or waste-land to which any provisions of this Act apply,

shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Power to arrest without warrant.

63. Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person reasonably suspected of having been concerned in any forest-offence punishable with imprisonment for one month or upwards, if such person refuses to give his name and residence, or gives a name or residence which there is reason to believe to be false, or if there is reason to believe that he will abscond.

Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case.

Power to prevent commission of offence.

64. Every Forest-officer and Police-Officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

Operation of other laws not barred.

65. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes a forest offence or from being liable under such other law to any higher punishment or penalty than that provided by this Act or the rules made hereunder:

Provided that no person shall be punished twice for the same offence.

Power to compound offences.

66. Any Forest-officer specially empowered in this behalf may accept from any person reasonably suspected of having committed any forest-offence other than an offence under section sixty-one or section sixty-two a sum of money by way of compensation for the offence which may have been committed; and where any property has been seized as liable to confiscation, may release the same on payment of the value thereof as estimated by such officer.

On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the accused person, if in custody, shall be discharged, the property seized shall be released, and no further proceedings shall be taken against such person or property.

Presumption that timber or forest-produce belongs to Government.

67. When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any timber or forest-produce is the property of the Government, such timber or produce shall be presumed to be the property of the Government until the contrary is proved.

CHAPTER IX.

CATTLE-TRESPASS.

Cattle-trespass Act, 1871, to apply.

68. Cattle trespassing in a reserved forest or in a village-forest shall be deemed to be cattle doing damage to a public plantation within the meaning of the eleventh section of the Cattle-trespass Act, 1871, and may be seized and impounded as such by any Forest-officer or Police-officer.

Power to alter fines fixed by that Act.

69. The Chief Commissioner may, by notification in the official Gazette, direct that, in lieu of the fines fixed by the twelfth section of the Act last aforesaid, there shall be levied for each head of cattle impounded under section sixty-eight of this Act, such fines as he thinks fit, but not exceeding the following (that is to say):—

	Rs.	A.
For each elephant	10	0
For each buffalo	2	0
For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer ...	1	0
For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid ...	0	8

CHAPTER X.

OF FOREST-OFFICERS.

Chief Commissioner may invest Forest-officers with certain powers.

70. The Chief Commissioner may invest any Forest-officer by name, or as holding an office, with the following powers (that is to say):—

(*a*) the powers of a Demarcation-officer under the Burma Boundaries Act, 1880;

(*b*) the powers of a Civil Court to compel the attendance of witnesses and the production of documents;

(*c*) power to issue search-warrants under the Code of Criminal Procedure;

(*d*) power to hold enquiries into forest-offences, and in the course of such enquiries to receive and record evidence;

(*e*) power to notify seasons and manner in which fire may be kindled, kept or carried in a reserved forest;

(*f*) power to grant any permission referred to in section twenty-seven, thirty-two, thirty-six or thirty-eight;

(*g*) power to notify stations for the reception of drift timber;

(*h*) power to give public notice of timber collected under section forty-six;

(*i*) power to take possession of property under this Act;

(*j*) power to direct the release of property or withdrawal of charges;

(*k*) power to accept compensation for forest-offences;

and may withdraw any powers so conferred.

Any evidence recorded under clause (*d*) of this section shall be admissible in any subsequent trial before a Magistrate of the alleged offender: Provided that it has been taken in the presence of the accused person, and recorded in the manner provided by section 333, section 334 or section 335 of the Code of Criminal Procedure.

Forest-officers deemed public servants.

71. All Forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

Indemnity for acts done in good faith.

72. No suit or criminal prosecution shall lie against any public servant for anything done or omitted by him in good faith under this Act.

Forest-officers not to trade.

73. Except with the permission in writing of the Chief Commissioner, no Forest-officer shall, as principal or agent, trade in timber or forest-produce, or be or become interested in any lease or mortgage of any forest or in any contract for working any forest, whether in British or foreign territory.

CHAPTER XI.

MISCELLANEOUS.

Additional powers to make rules.

74. The Chief Commissioner may make rules consistent with this Act—

(*a*) to declare by what Forest-officer or class of Forest-officers the powers or duties conferred or imposed by or under this Act on a Forest-officer shall be exercised or performed;

(*b*) to regulate the procedure of Forest-Settlement-officers;

(*c*) to regulate the rewards to be paid to officers and informers from the proceeds of fines and confiscations under this Act or from the Public Treasury; and

(*d*) generally to carry out the provisions of this Act.

Rules when to have force of law.

75. All rules made by the Chief Commissioner under this Act shall be published in the official Gazette, and shall thereupon have the force of law.

Powers of Chief Commissioner exercisable from time to time.

All powers conferred by this Act on the Chief Commissioner may be exercised from time to time as occasion requires.

Persons bound to assist Forest-officer and Police-officer.

76. Every person who exercises any right in a reserved forest or a village-forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle or to practice toungya cultivation in, such forest, and

every person who is employed by any such person in such forest, and

every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information he may possess respecting the occurrence of a fire in or near such forest, or, the commission of, or intention to commit, any forest-offence, and shall assist any Forest-officer or Police-officer demanding his aid—

(*a*) in extinguishing any fire occurring in such forest;

(*b*) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest;

(*c*) in preventing the commission in such forest of any forest-offence; and

(*d*) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

Recovery of money due to Government.

77. All money, other than fines, payable to the Government under this Act, or under any rule made hereunder, or on account of the price of any timber or forest-produce, or of expenses incurred in the execution of this Act in respect of such timber or forest-produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

Lien on forest-produce for such money.

78. When any such money is payable for, or in respect of, any forest-produce, the amount thereof shall be deemed to be a first charge on such produce; and such produce may be taken possession of by a Forest-officer specially empowered in this behalf, and may be retained by him until such amount has been paid.

Power to sell such produce.

If such amount is not paid when due, such Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

The surplus (if any), if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Government.

Government and its officers not liable for loss or damage in respect of certain timber.

79. The Government shall not be responsible for any loss or damage which may occur in respect of any timber while at a station established under a rule

made under section forty-three, or while detained elsewhere for the purposes of this Act, or in respect of any timber collected under section forty-six; and no Forest-officer shall be responsible for any such loss or damage unless he causes the same negligently, maliciously or fraudulently.

Land required under this Act to be deemed to be needed for a public purpose under Land Acquisition Act.

80. Whenever it appears to the Chief Commissioner that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act, 1870, section four.

SCHEDULE.

(*See section 2.*)

ENACTMENTS REPEALED.

Number and year of Act or Regulation.	Title.	Extent of repeal.
Act VII of 1865...	An Act to give effect to rules for the management and preservation of Government forests.	So much as has not been repealed.
Act VII of 1869...	An Act to give validity to certain rules relating to forests in British Burma.	The whole.
Act XIII of 1873	An Act to amend the law relating to timber floated down the rivers of British Burma.	So much as has not been repealed.
Regulation IX of 1874.	The Arakan Hill District Laws Regulation, 1874.	So far as it relates to Acts VII of 1865 and VII of 1869.
	The Rules for the better management and preservation of the Government Forests in British Burma, dated the second day of August, 1865.	The whole.

R. J. CROSTHWAITE,

Offg. Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY SEPTEMBER 10, 1881.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 31st August, 1881, and is hereby promulgated for general information:—

ACT No. XIX OF 1881.

THE BURMA FOREST ACT, 1881.

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SCHEDULE.—ENACTMENTS REPEALED.

An Act to amend the law relating to Forests, Forest-produce, and the duty leviable on Timber in British Burma.

WHEREAS it is expedient to amend the law relating to forests, forest-produce, and the duty leviable on timber in British Burma; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Burma Forest Act, 1881": Short title.

It extends to all the territories for the time being administered by the Chief Commissioner of British Burma, provided that the Chief Commissioner may, by notification in the official Gazette, exempt any place from its operation; but not so as to affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings Local extent.

commenced in such place before such exemption; and

it shall come into force on such day as the Chief Commissioner may, by notification in the official Gazette, direct. Commencement.

2. On and from such day the enactments and rules mentioned in the schedule hereto annexed shall be repealed to the extent mentioned in the third column of the same schedule. Repeal of enactments.

3. In this Act, and in all rules made hereunder, unless there is something repugnant in the subject or context,— Interpretation-clause.

"Forest-officer" means all persons appointed by name or as holding an office by or under the orders of the Governor General in Council or the Chief Commissioner to be— "Forest-officer."

Conservators, Deputy Conservators, Assistant Conservators, Sub-Assistant Conservators, Forest-rangers, Foresters, or Forest-guards, or to discharge any function of a Forest-officer under this Act or any rule made hereunder:

"tree" includes also bamboos, stumps and brushwood: "tree":

"timber" includes trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed out for any purpose or not: "timber":

"forest-produce" includes the following things when found in, or brought from a forest (that is to say) :— "forest-produce."

minerals (including limestone and laterite), surface-soil, trees, timber, plants, grass, peat, canes, creepers, reeds, leaves, moss, flowers, fruits, seeds, roots, juice, catechu, bark, caoutchouc, gum, wood-oil, resin, varnish, lac, charcoal, honey and wax;

"forest-offence" means an offence punishable under this Act or any rule made hereunder: "forest-offence":

"cattle" includes also elephants, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids: "cattle":

"river" includes also streams, canals, creeks and other channels, natural or artificial: "river":

"land at the disposal of Government" means "land at the disposal of Government."

(*a*) land in respect of which no person has acquired the status of a land-holder under section seven of the Burma Land and Revenue Act, 1876,

(*b*) land in respect of which no person has acquired any right created by grant or lease made by, or on behalf of, the British Government.

"Magistrate" means a Magistrate of the first or second class and includes a Magistrate of the third class when he is specially empowered by the Chief Commissioner to try forest-offences. "Magistrate."

4. Nothing in the Burma Land and Revenue Act, 1876, shall be deemed to affect or ever to have affected any right by which one person is entitled to remove and appropriate, for his own profit, any part of the soil belonging to another person or to the Government, or anything growing in, or attached to, or subsisting upon, the land of another person or of the Government. Saving of rights of profit from the Burma Land and Revenue Act, 1876.

CHAPTER II.

OF RESERVED FORESTS.

5. The Chief Commissioner may constitute any land at the disposal of Government, a reserved forest in manner hereinafter provided. Power to reserve forests.

6. Whenever it is proposed to constitute any land a reserved forest, the Chief Commissioner shall publish a notification in the official Gazette— Notification by Chief Commissioner.

(*a*) specifying as nearly as possible the situation and limits of such land;

(*b*) declaring that it is proposed to constitute such land a reserved forest;

(*c*) appointing an officer (hereinafter called "the Forest-Settlement-officer") to inquire into and determine the existence, nature and extent of any rights claimed by, or alleged to exist in favor of, any person in or over any land comprised within such limits, and any claims relating to the practice within such limits of toungya cultivation, and to deal with the same as provided in this chapter.

The officer appointed under clause (*c*) of this section shall ordinarily be a person other than a Forest-officer; but a Forest-officer may be appointed by the Chief Commissioner to assist the Forest-Settlement-officer in the inquiry prescribed by this chapter.

7. When a notification has been published under section six, the Forest-Settlement-officer shall publish in the language of the country, at the head-quarters of each township in which any portion of the land comprised in such notification is situate, and in every town and village in the neighbourhood of such land, a proclamation— Proclamation by Forest-Settlement-officer.

(*a*) specifying as nearly as possible the situation and limits of the proposed forest;

(*b*) setting forth the substance of the provisions of section eight;

(*c*) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and

(*d*) fixing a period of not less than three months from the date of publishing such proclamation, and requiring every person claiming any right or making any claim referred to or mentioned in section six either to present to such officer within such period a written notice specifying, or to appear before him within such period and state, the nature of such right or claim.

8. During the interval between the publication of such proclamation and the date fixed by the notification declaring the forest to be reserved as hereinafter provided, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by, or on behalf of, the Government or some person in whom such right, or power to create the same, was vested when the Bar of accrual of forest-rights.

Prohibition of building, clearing, &c.

proclamation was published; and, on such land, no new house shall be built or plantation formed, no fresh clearings for cultivation or for any other purpose shall be made, and no trees shall be cut for the purpose of trade or manufacture, except as hereinafter provided.

Nothing in this section shall be deemed to prohibit any act done with the permission in writing of the Forest-Settlement-officer, or any clearings lawfully made for toungya cultivation by persons in the habit of practicing such cultivation on such land.

9. The Forest-Settlement-officer shall take down in writing all statements made under section seven, and shall inquire into all claims made under that section, and the existence of any right or practice mentioned in section six in respect of which no claim is made. The Forest-Settlement-officer shall at the same time consider and record any objection which the Forest-officer (if any), appointed under section six to assist him, may make to any such claim or to the existence of any such right or practice.

Inquiry by Forest-Settlement-officer.

10. For the purposes of such inquiry, the Forest-Settlement-officer may exercise the following powers (that is to say):—

Powers of Forest-Settlement-officer.

(*a*) the powers of a demarcation-officer under The Burma Boundaries Act, 1880; and

(*b*) the powers conferred on a Civil Court by the Code of Civil Procedure for compelling the attendance of witnesses and the production of documents.

11. In the case of a claim relating to the practice of toungya cultivation, the Forest-Settlement-officer shall pass an order specifying the particulars of such claim and permitting, or refusing to permit, such practice wholly or in part.

Claims relating to practice of toungya cultivation how dealt with.

If such practice is permitted wholly or in part, the Forest-Settlement-officer may—

(*a*) alter the limits of the proposed reserved forest so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants; or

(*b*) cause certain portions of the reserved forest to be separately demarcated, and give permission to the claimants to practice toungya cultivation under such rules and conditions as he may prescribe.

No right to practice toungya cultivation shall be deemed to be conferred by an order under this section permitting such practice, and, except with the sanction of the Chief Commissioner, such cultivation shall only be practiced by the person to whom such permission is granted.

Power to acquire land over which right is claimed.

12. In the case of a claim to a right in or over any land other than the following rights:—

(*a*) a right of way,

(*b*) a right to a water-course, and to use of water,

(*c*) a right of pasture, or to forest-produce,

the Forest-Settlement-officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part.

If such claim is admitted wholly or in part, the Forest-Settlement-officer may (1) come to an agreement with the claimant for the surrender of the right; or, (2) exclude the land from the limits of the proposed forest; or, (3) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1870.

For the purpose of so acquiring such land—

(i) the Forest-Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1870;

(ii) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section nine of that Act;

(iii) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and

(iv) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

13. In the case of a claim to rights of the kind specified in clauses (*a*), (*b*) and (*c*) of section twelve, the Forest-Settlement-officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part.

Order on claims to rights of way, water-course, pasture, and to forest-produce.

When a claim to any such right is admitted, if the right is for the beneficial enjoyment of any land or buildings, he shall record the designation, position and area of such land, and the designation and position of such buildings.

Where the right is a right to forest-produce, he shall also record whether the forest-produce obtained by the exercise of such right may be sold or bartered, and such other particulars as may be necessary in order to define the nature, incidents and extent of the right.

14. When the Forest-Settlement-officer has admitted wholly or in part, and recorded under section thirteen, a claim to a right of pasture or to forest-produce, he shall as far as possible provide for the exercise of such right—

Provision for rights of pasture or to forest-produce admitted.

(*a*) by altering the limits of the proposed reserved forest so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimant;

(*b*) by recording an order continuing to the claimant a right of pasture or to forest-produce (as the case may be), subject to such rules as may be prescribed by the Chief Commissioner.

The order passed under clause (*b*) shall record, as far as practicable, the number and description of the cattle which the claimant is from time to time entitled to graze, the local limits within which, and the seasons during which, such pasture is permitted; or

the quantity of timber or other forest-produce which the claimant is authorized to take or receive, the local limits within which, the season during which, and the mode in which, the taking of such produce is permitted; and

such other particulars as may be required in order to define the extent of the right which is continued, and the mode in which it may be exercised.

15. Whenever any right of pasture or to forest-produce admitted under section thirteen is not provided for in one of the ways prescribed in section fourteen, the Forest-Settlement-officer shall, subject to such rules as the Chief Commissioner may prescribe in this behalf, commute such right by paying a sum of money in lieu thereof, or, with the consent of the claimant, by the grant of land, or in such other manner as such officer thinks fit.

Commutation of such rights.

For the purpose of granting land under this section, the Forest-Settlement-officer shall be deemed to be an Assistant Commissioner in charge of a sub-division.

16. Any person who has made a claim under this chapter may, within three months from the date of any order passed on such claim by the Forest-Settlement-officer under section eleven, twelve, thirteen, fourteen or fifteen, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Deputy Commissioner, as the Chief Commissioner may, by notification in the official Gazette, appoint by name, or as holding an office, to hear appeals from such orders.

Appeal from order passed under foregoing sections.

17. Every appeal under section sixteen shall be made by petition in writing, and may be delivered to the Forest-Settlement-officer, who shall forward it without delay to the officer competent to hear the same.

Appeal under section 16.

Every such appeal shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue, and the order passed thereon by such officer shall be final, except as hereinafter provided.

Hearing of appeals.

18. When the following events have occurred (namely):—

Notification declaring forest reserved.

(*a*) the period fixed under section seven for preferring claims has elapsed, and all claims (if any) made within such period have been disposed of by the Forest-Settlement-officer, and

(*b*) if such claims have been made, the period fixed by section sixteen for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer, and

(*c*) all lands (if any) to be included in the proposed forest, which the Forest-Settlement-officer under section twelve, elected to acquire under the Land Acquisition Act, 1870, have become vested in the Government under section sixteen of that Act,

the Chief Commissioner may publish a notification in the official Gazette, specifying the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date fixed by such notification.

From the date so fixed, such forest shall be deemed to be a reserved forest.

19. Rights in respect of which no claim has been preferred under section seven, and of the existence of which no knowledge has been acquired by enquiry under section nine, shall thereupon be extinguished, unless, before the publication of such notification, the person claiming them has satisfied the Forest-Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section seven.

Extinction of rights not claimed.

20. The Deputy Commissioner of the district in which the forest is situate shall, before the date fixed by such notification, cause a translation thereof in the language of the country to be published in the manner prescribed for the proclamation under section seven.

Publication of translation of such notification in neighbourhood of forest.

21. The Chief Commissioner may, within five years from the publication of any notification under section eighteen, revise any arrangement made under section eleven, fourteen or seventeen, and may rescind or modify any order made under this chapter, and direct that any one of the proceedings specified in section fourteen be taken in lieu of any other of such proceedings, or that the permission granted under section eleven or rights admitted under section thirteen be commuted under section fifteen.

Power to revise arrangement made under section 11, 14 or 17.

22. No right of any description shall be acquired in or over a reserved forest, except by succession, or under a grant or contract in writing made by, or on behalf of, the Government, or some person in whom such right, or the power to create such right, was vested when the notification under section eighteen was published.

No right acquired over reserved forest except as here provided.

23. Notwithstanding anything herein contained, no right continued under section fourteen shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the Chief Commissioner: provided that, when any such right is continued for the beneficial enjoyment of any land or house, it may be sold or otherwise alienated with such land or house without such sanction.

Rights not to be alienated without sanction.

No timber or other forest-produce obtained in exercise of any right so continued shall be sold or bartered except to the extent defined by the order recorded under section fourteen.

24. Any Forest-officer may, from time to time, with the previous sanction of the Chief Commissioner or of any officer duly authorized in that behalf, stop any public or private way or water-course in a reserved forest: provided that for the way or water-course so stopped, another way or water-course which in the opinion of the Chief Commissioner is equally convenient, already exists, or has been provided or constructed by such Forest-officer.

Power to stop ways and water-courses in reserved forest.

25. Any person who in a reserved forest—

Penalties for trespass or damage in reserved forests.

(*a*) trespasses, or pastures cattle, or permits cattle to trespass,

(*b*) causes any damage by negligence in felling any tree or cutting or dragging any timber,

(*c*) strips off the bark or leaves from or otherwise damages any tree,

(*d*) in contravention of any rules made by the Chief Commissioner, hunts, shoots, fishes, poisons water, or sets traps or snares,

shall be punished with fine which may extend to fifty rupees, or when the damage resulting from his offence amounts to more than twenty-five rupees, to double the amount of such damage.

Acts prohibited in such forests.

26. Any person who—

(*a*) makes any fresh clearing prohibited by section eight, or

(*b*) sets fire to a reserved forest, or kindles any fire or, in contravention of any rules made by the Chief Commissioner, leaves any fire burning in such manner as to endanger the same,

or who, in a reserved forest,

(*c*) kindles, keeps or carries any fire except at such seasons and in such manner as a Forest-officer specially empowered in this behalf may from time to time notify,

(*d*) fells, girdles, lops, taps, or burns any tree,

(*e*) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce,

(*f*) clears or breaks up any land for cultivation or any other purpose,

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

Acts excepted from prohibition contained in sections 25 and 26.

27. Nothing in section twenty-five or section twenty-six shall be deemed to prohibit (*a*) any act done in accordance with any rule made by the Chief Commissioner or with the permission in writing of a Forest-officer, specially empowered to grant such permission; or (*b*) any practice of toungya cultivation permitted under section eleven; or (*c*) the exercise of any right continued under section fourteen or created by grant or contract in the manner described in section twenty-two.

Penalty for offences committed by persons having rights in reserved forests.

28. Whenever fire is caused wilfully or by gross negligence in a reserved forest by any person having rights in such forest, or having permission to practice toungya cultivation therein, or by any person in his employment, or whenever any person having rights in such forest contravenes the provisions of section twenty-three, the Chief Commissioner may (notwithstanding that a penalty has been inflicted under section twenty-six in respect of such fire) direct that in such forest or any specified portion thereof the exercise of all or any of the rights of pasture or to forest-produce shall be extinguished or suspended for such period as he thinks fit, and may withdraw any permission to practice toungya cultivation in such forest or portion.

Power to declare forest no longer reserved.

29. The Chief Commissioner may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be reserved.

From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

Forests reserved under former rules.

30. Any forest which has been declared a reserved forest under any rules in force previous to the day on which this Act comes into force shall be deemed to have been reserved hereunder;

and all questions decided, orders issued and records prepared in connection with the reservation of such forest shall be deemed to have been decided, issued and prepared hereunder, and all provisions of this Act relating to reserved forests shall apply to such forest.

CHAPTER III.

OF VILLAGE-FORESTS.

Constitution of village-forests.

31. The Chief Commissioner may by notification in the official Gazette constitute any land at the disposal of Government a village-forest for the benefit of any village-community or group of village-communities, and may in like manner vary or cancel any such notification.

Every such notification shall specify the limits of such village-forest.

Teak trees in village-forest the property of Government.

32. All teak trees in a village-forest shall be deemed to be the property of Government; and no person shall cut, mark, lop, girdle, or injure by fire or otherwise, any such trees without the permission in writing of a Forest-officer specially empowered to grant such permission.

Power to make rules for village-forests.

33. The Chief Commissioner may make rules for regulating the management of village-forests, prescribing the conditions under which the community or group of communities for the benefit of which any such forest is constituted may be provided with timber or other forest-produce or with pasture, and their duties in respect of the protection and improvement of such forest.

The Chief Commissioner may, by such rules, declare any of the provisions of Chapter II of this Act to be applicable to village-forests.

Saving of private rights.

34. Nothing in this chapter shall be deemed to affect any existing rights of any person in or over any village-forest.

Power to inquire into and deal with such rights.

The Chief Commissioner may in any case direct that all claims to any such rights, other than the rights of the village-community or group of village communities for the benefit of which such village-forest is constituted, shall be inquired into, recorded and provided for in the manner prescribed by Chapter II of this Act.

CHAPTER IV.

OF THE PROTECTION OF CERTAIN TREES AND NATURAL PRODUCE.

Reserved trees.

35. All teak trees standing on any land not included in a reserved or village-forest shall be deemed to be the property of Government and shall be reserved trees.

The Chief Commissioner may by notification in the official Gazette—

(*a*) declare that any other trees or any specified class of other trees standing on any land at the disposal of Government shall, from a date to be fixed by such notification, be reserved trees;

(*b*) vary or cancel any such notification;

(*c*) declare that any teak trees standing on land other than land at the disposal of Government shall, from a date to be fixed by such notification, cease to be the property of Government and to be reserved trees.

Protection of reserved trees.

36. No person shall cut, mark, lop, girdle, tap, or injure by fire or otherwise, any reserved tree, except as provided by rules made by the Chief Commissioner in this behalf, or with the permission in writing of a Forest-officer specially empowered to grant such permission.

Whoever cuts, marks, lops, girdles, taps, or injures by fire or otherwise, any reserved tree in contravention of this section shall be punished with fine which may extend to twenty rupees, or when the damage resulting from his offence amounts to more than ten rupees, to double the amount of such damage.

Power to make rules generally.

37. No person shall make use of the pasturage or of the natural produce of any land at the disposal of Government and not included in a reserved or village-forest, except in accordance with rules which may be prescribed by the Chief Commissioner. Such rules may, with respect to such land,—

(*a*) regulate or prohibit the cutting of toungyas, or the issue of grants or leases by Government with respect to land on which teak trees are growing;

(*b*) regulate or prohibit the kindling of fires, and prescribe the precautions to be taken to prevent the spreading of fires;

(*c*) regulate or prohibit the cutting, sawing, conversion and removal of trees and timber, and the collection and removal of natural produce;

(*d*) regulate or prohibit the quarrying of stone, the boiling of cutch, or the burning of lime or charcoal;

(*e*) regulate or prohibit the cutting of grass and pasturing of cattle, and regulate the payments (if any) to be made for such cutting or pasturing;

(*f*) regulate or prohibit hunting, shooting, fishing, poisoning water and setting traps or snares;

(*g*) regulate the sale or free grant of timber or other natural produce; and

(*h*) prescribe, or authorize any Forest-officer to prescribe, subject to the control of the Chief Commissioner, the fees, royalties or other payments for such timber or other natural produce, and the manner in which such fees, royalties or other payments shall be levied, whether in transit, or partly in transit, or otherwise.

Penalties for acts in contravention of rules.

The Chief Commissioner may, by such rules, prescribe, as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

The Chief Commissioner may exempt any person or class of persons or any local area from the operation of any such rule, and may cancel such exemption.

Nothing in this chapter to prohibit acts done in certain cases.

38. Nothing in this chapter or in any rule made under this chapter shall be deemed to prohibit any act done with the permission in writing of a Forest-officer specially empowered to grant such permission, or in the exercise of any right.

CHAPTER V.

OF THE DUTY ON TIMBER.

Power to impose duty on timber.

39. The Chief Commissioner may levy a duty, in such manner, at such places, and at such rates, as he may prescribe by notification in the official Gazette, on all timber which is brought into British Burma from any place beyond the frontier of British Burma.

Power to fix value for *ad valorem* duty.

In every case in which such duty is directed to be levied *ad valorem*, the Chief Commissioner may, by like notification, fix the value on which such duty shall be assessed.

Duty on certain timber floated down the Attaran.

40. On all teak timber cut within the limits of the Attaran Forest and floated down the Attaran river, duty shall be levied at the following rates, that is to say:—

	Rs.	A.	P.	
On logs above five feet in girth ...	4	0	0	per log.
Ditto below „ „ ...	2	0	0	„
On stem pieces	0	9	0	per piece.
On ship crooks	0	4	0	per crook.

These rates shall not apply to timber for which special rates have been fixed by any agreement entered into with Government.

Power to exempt timber from duty.

41. The Chief Commissioner may exempt any timber from the duty to which it is liable under section thirty-nine or section forty, and revoke such exemption.

Provisions of chapter not to limit purchase-money or royalty.

42. Nothing in this chapter shall be deemed to limit the amount (if any) chargeable as purchase-money or royalty on any timber.

CHAPTER VI.

OF THE CONTROL OF TIMBER IN TRANSIT.

Power to make rules to regulate transit of timber.

43. The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber in transit by land or water, is vested in the Chief Commissioner, and he may make rules to regulate the transit of all timber.

Such rules may (among other matters)—

(*a*) prescribe the routes by which alone timber may be imported into, exported from, or moved within, British Burma;

(*b*) prohibit the import and export or moving of such timber without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass;

(*c*) provide for the issue, production and return of such passes;

(*d*) fix, or authorize any Forest-officer to fix, subject to the control of the Chief Commissioner, the fees payable for such passes;

(*e*) in the case of timber formed into a raft or fastened to the shore, prohibit the loosening or the setting adrift of such timber by any person not the owner thereof, or not acting on behalf of such owner or of the Government;

(*f*) provide for the stoppage, reporting, examination and marking of timber in transit in respect of which there is reason to believe that any money is payable to Government or to which it is desirable, for the purposes of this Act, to affix a mark;

(*g*) establish, or authorize any Forest-officer to establish, subject to the control of the Chief Commissioner, stations to which such timber shall be taken by those in charge of it for examination, or for the realization of such money, or in order that such mark may be affixed to it; and the conditions under which such timber shall be brought to, stored at, and removed from, such station;

(*h*) provide for the management and control of such stations, and for regulating the appointment and duties of persons employed thereat;

(*i*) authorize the transport of timber the property of Government across any land, and regulate the compensation to be paid for any damage done by the transport of such timber;

(*j*) prohibit the closing up or obstruction of the channel or banks of any river used for the transit of timber, and the throwing of grass, brushwood, branches and leaves into any such river, or any other act which tends to cause the obstruction of such channel;

(*k*) provide for the prevention and removal of any obstruction in the channel or on the banks of any such river, and for recovering the cost of such prevention or removal, from the person, or by the sale of any timber, causing such obstruction;

(*l*) prohibit absolutely, or subject to conditions within specified local limits, the establishment of sawpits, the converting, cutting, burning, concealing, marking or supermarking of timber, the altering or effacing of any marks on the same, and possession or carrying of marking-hammers or other implements used for marking timber;

(*m*) regulate the use of property-marks for timber, and the registration of such marks; declare the circumstances in which the registration of any property-marks may be refused or cancelled; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

Penalties for breach of rules made under section 43.

44. The Chief Commissioner may, by such rules, prescribe, as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

In cases where the offence is committed after sunset and before sunrise, or after making preparation for resistance to the execution of any law or any legal process, or where the offender has been previously convicted of a like offence, the convicting Magistrate may inflict double the penalty prescribed for such offence.

All persons bound to aid in case of accident at station.

45. In case of any accident or emergency involving danger to any property at any such station, every person employed at such station, whether by the Government or by any private person, shall render assistance to any Forest-officer or Police-officer demanding his aid in averting such danger and securing such property from damage or loss.

CHAPTER VII.

OF THE COLLECTION OF DRIFT, STRANDED AND OTHER TIMBER.

Certain kinds of timber to be deemed property of Government until title thereto proved.

46. All timber found adrift, beached, stranded or sunk,

all timber bearing marks which have not been registered under rules made under section forty-three,

all timber which has been supermarked, or on which the marks have been obliterated, altered or defaced by fire or otherwise, and

in such areas as the Chief Commissioner directs, all unmarked timber,

shall be deemed to be the property of Government unless and until any person establishes his right thereto as provided in this chapter.

Power to collect the same.

Such timber may be collected by any Forest-officer or other person entitled to collect the same, and may be brought to such stations as a Forest-officer specially empowered in this behalf may from time to time notify as stations for the reception of drift-timber.

The Chief Commissioner may, by notification in the official Gazette, exempt any class of timber from the provisions of this section, and withdraw such exemption.

Notice to claimants of drift-timber.

47. Public notice shall from time to time, as occasion may require, be given by a Forest-officer specially empowered in this behalf of timber collected under section forty-six. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than one month from the date on which such notice is given, a written statement of such claim.

Procedure on claim preferred to such timber.

48. When any such statement is presented as aforesaid, the Forest-officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Court and retain the timber pending the receipt of an order from such Court for its disposal.

On rejection of claim to such timber, claimant may institute suit.

Any person whose claim has been rejected under this section may, within two months from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation against the Government or against any Forest-officer on account of such rejection, or the

detention or removal of any timber, or the delivery thereof to any other person under this section.

No such timber shall be subject to process of any Civil Court until it has been delivered, or a suit brought under this section has been decided.

Disposal of unclaimed timber.

49. If no statement is presented in the manner and within the period prescribed by the notice issued under section forty-seven, or, where such statement having been so presented and the claim having been rejected, the claimant omits to institute a suit to recover possession of such timber within the further period mentioned in section forty-eight, the ownership of such timber shall vest in the Government free from all incumbrances; or, when such timber has been delivered to another person under section forty-eight, in such other person, free from all incumbrances not created by him.

Payments to be made by claimant before timber is delivered to him.

50. No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer, or other person entitled to receive it, such sum on account thereof as may be due for salving, collecting, moving, storing and disposing of the same.

Power to make rules and prescribe penalties.

51. The Chief Commissioner may make rules to regulate the following matters (namely):—

(*a*) the salving, collection and disposal of all timber mentioned in section forty-six;

(*b*) the use and registration of boats used in salving and collecting timber;

(*c*) the amount to be paid for salving, collecting, moving, storing and disposing of such timber; and

(*d*) the use and registration of hammers and other instruments to be used for marking such timber.

The Chief Commissioner may, by such rules, prescribe, as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

CHAPTER VIII.

PENALTIES AND PROCEDURE.

Seizure of property liable to confiscation.

52. When there is reason to believe that a forest-offence has been committed in respect of any timber or forest-produce, such timber or produce, together with all tools, boats, carts and cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.

Report to Magistrate.

Every officer seizing any property under this section shall place on such property, or the receptacle (if any) in which it is contained, a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that when the timber or forest-produce with respect to which such offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

Procedure thereupon.

53. Upon the receipt of any such report, the Magistrate shall take such measures as may be necessary for the trial of the accused and the disposal of the property according to law.

Timber, forest-produce, tools, &c., when liable to confiscation.

54. When any person is convicted of a forest-offence, all timber or forest-produce in respect of which such offence has been committed, and all tools, boats, carts and cattle used in committing such offence, shall be liable, by order of the convicting Magistrate, to confiscation.

Such confiscation may be in addition to any other punishment prescribed for such offence.

Disposal, on conclusion of trial for forest-offence, of produce in respect of which it was committed.

55. When the trial of any forest-offence is concluded, any timber or forest-produce in respect of which such offence has been committed shall, if it is the property of Government, or has been confiscated, be taken possession of by a Forest-officer specially empowered in this behalf; and in any other case may be disposed of in such manner as the Court may order.

Procedure when offender not known or cannot be found.

56. When the offender is not known or cannot be found, the Magistrate enquiring into the offence, if he finds that an offence has been committed, may, on application in this behalf, order the property in respect of which the offence has been committed to be confiscated and taken possession of by a Forest-officer specially empowered in this behalf, or to be made over to such Forest-officer or other person as the Magistrate considers entitled to the same:

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

The Magistrate shall either cause a notice of any application under this section to be served upon any person whom he has reason to believe is interested in the property seized, or shall publish such notice in any way which he thinks fit.

Procedure as to perishable property seized under section 52.

57. The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section fifty-two and subject to speedy and natural decay, and may deal with the proceeds as he might have dealt with such property if it had not been sold.

Appeal from orders under sections 54, 55 and 56.

58. Any person claiming to be interested in property seized under section fifty-two may, within one month from the date of any order passed under section fifty-four, section fifty-five or section fifty-six, present an appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

Property when to vest in Government.

59. When an order for the confiscation of any property has been passed under section fifty-four or fifty-six, and the period limited by section fifty-eight for presenting an appeal

from such order has elapsed, and no such appeal has been presented, or when, on such an appeal being presented, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or portion, as the case may be, shall vest in the Government free from all incumbrances.

Saving of power to release property seized.

60. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Chief Commissioner from directing at any time the immediate release of any property seized under section fifty-two and the withdrawal of any charge made in respect of such property.

Punishment for wrongful seizure.

61. Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Any fine so imposed, or any portion thereof, shall, if the convicting Magistrate so direct, be given as compensation to the person aggrieved by such seizure.

Penalty for counterfeiting or defacing marks in trees and timber and for altering boundary-marks.

62. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code—

(*a*) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person, or

(*b*) unlawfully affixes to any timber or standing tree a mark used by Forest-officers, or

(*c*) alters, defaces or obliterates any such mark placed on any timber or standing tree by or under the authority of a Forest-officer, or

(*d*) alters, moves, destroys or defaces any boundary-mark of any forest or waste-land to which any provisions of this Act apply,

shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Power to arrest without warrant.

63. Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person reasonably suspected of having been concerned in any forest-offence punishable with imprisonment for one month or upwards, if such person refuses to give his name and residence, or gives a name or residence which there is reason to believe to be false, or if there is reason to believe that he will abscond.

Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case.

Power to prevent commission of offence.

64. Every Forest-officer and Police-Officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

Operation of other laws not barred.

65. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes a forest offence or from being liable under such other law to any higher punishment or penalty than that provided by this Act or the rules made hereunder:

Provided that no person shall be punished twice for the same offence.

Power to compound offences.

66. Any Forest-officer specially empowered in this behalf may accept from any person reasonably suspected of having committed any forest-offence other than an offence under section sixty-one or section sixty-two a sum of money by way of compensation for the offence which may have been committed; and where any property has been seized as liable to confiscation, may release the same on payment of the value thereof as estimated by such officer.

On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the accused person, if in custody, shall be discharged, the property seized shall be released, and no further proceedings shall be taken against such person or property.

Presumption that timber or forest-produce belongs to Government.

67. When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any timber or forest-produce is the property of the Government, such timber or produce shall be presumed to be the property of the Government until the contrary is proved.

CHAPTER IX.

CATTLE-TRESPASS.

Cattle-trespass Act, 1871, to apply.

68. Cattle trespassing in a reserved forest or in a village-forest shall be deemed to be cattle doing damage to a public plantation within the meaning of the eleventh section of the Cattle-trespass Act, 1871, and may be seized and impounded as such by any Forest-officer or Police-officer.

Power to alter fines fixed by that Act.

69. The Chief Commissioner may, by notification in the official Gazette, direct that, in lieu of the fines fixed by the twelfth section of the Act last aforesaid, there shall be levied for each head of cattle impounded under section sixty-eight of this Act, such fines as he thinks fit, but not exceeding the following (that is to say):—

	Rs.	A.
For each elephant	10	0
For each buffalo	2	0
For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer ...	1	0
For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid ...	0	8

CHAPTER X.

OF FOREST-OFFICERS.

Chief Commissioner may invest Forest-officers with certain powers.

70. The Chief Commissioner may invest any Forest-officer by name, or as holding an office, with the following powers (that is to say):—

(*a*) the powers of a Demarcation-officer under the Burma Boundaries Act, 1880;

(*b*) the powers of a Civil Court to compel the attendance of witnesses and the production of documents;

(*c*) power to issue search-warrants under the Code of Criminal Procedure;

(*d*) power to hold enquiries into forest-offences, and in the course of such enquiries to receive and record evidence;

(*e*) power to notify seasons and manner in which fire may be kindled, kept or carried in a reserved forest;

(*f*) power to grant any permission referred to in section twenty-seven, thirty-two, thirty-six or thirty-eight;

(*g*) power to notify stations for the reception of drift timber;

(*h*) power to give public notice of timber collected under section forty-six;

(*i*) power to take possession of property under this Act;

(*j*) power to direct the release of property or withdrawal of charges;

(*k*) power to accept compensation for forest-offences;

and may withdraw any powers so conferred.

Any evidence recorded under clause (*d*) of this section shall be admissible in any subsequent trial before a Magistrate of the alleged offender: Provided that it has been taken in the presence of the accused person, and recorded in the manner provided by section 333, section 334 or section 335 of the Code of Criminal Procedure.

Forest-officers deemed public servants.

71. All Forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

Indemnity for acts done in good faith.

72. No suit or criminal prosecution shall lie against any public servant for anything done or omitted by him in good faith under this Act.

Forest-officers not to trade.

73. Except with the permission in writing of the Chief Commissioner, no Forest-officer shall, as principal or agent, trade in timber or forest-produce, or be or become interested in any lease or mortgage of any forest or in any contract for working any forest, whether in British or foreign territory.

CHAPTER XI.

MISCELLANEOUS.

Additional powers to make rules.

74. The Chief Commissioner may make rules consistent with this Act—

(*a*) to declare by what Forest-officer or class of Forest-officers the powers or duties conferred or imposed by or under this Act on a Forest-officer shall be exercised or performed;

(*b*) to regulate the procedure of Forest-Settlement-officers;

(*c*) to regulate the rewards to be paid to officers and informers from the proceeds of fines and confiscations under this Act or from the Public Treasury; and

(*d*) generally to carry out the provisions of this Act.

Rules when to have force of law.

75. All rules made by the Chief Commissioner under this Act shall be published in the official Gazette, and shall thereupon have the force of law.

Powers of Chief Commissioner exercisable from time to time.

All powers conferred by this Act on the Chief Commissioner may be exercised from time to time as occasion requires.

Persons bound to assist Forest-officer and Police-officer.

76. Every person who exercises any right in a reserved forest or a village-forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle or to practice toungya cultivation in, such forest, and

every person who is employed by any such person in such forest, and

every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information he may possess respecting the occurrence of a fire in or near such forest, or, the commission of, or intention to commit, any forest-offence, and shall assist any Forest-officer or Police-officer demanding his aid—

(*a*) in extinguishing any fire occurring in such forest;

(*b*) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest;

(*c*) in preventing the commission in such forest of any forest-offence; and

(*d*) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

Recovery of money due to Government.

77. All money, other than fines, payable to the Government under this Act, or under any rule made hereunder, or on account of the price of any timber or forest-produce, or of expenses incurred in the execution of this Act in respect of such timber or forest-produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

Lien on forest-produce for such money.

78. When any such money is payable for, or in respect of, any forest-produce, the amount thereof shall be deemed to be a first charge on such produce; and such produce may be taken possession of by a Forest-officer specially empowered in this behalf, and may be retained by him until such amount has been paid.

Power to sell such produce.

If such amount is not paid when due, such Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

The surplus (if any), if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Government.

Government and its officers not liable for loss or damage in respect of certain timber.

79. The Government shall not be responsible for any loss or damage which may occur in respect of any timber while at a station established under a rule

made under section forty-three, or while detained elsewhere for the purposes of this Act, or in respect of any timber collected under section forty-six; and no Forest-officer shall be responsible for any such loss or damage unless he causes the same negligently, maliciously or fraudulently.

Land required under this Act to be deemed to be needed for a public purpose under Land Acquisition Act.

80. Whenever it appears to the Chief Commissioner that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act, 1870, section four.

SCHEDULE.

(See section 2.)

ENACTMENTS REPEALED.

Number and year of Act or Regulation.	Title.	Extent of repeal.
Act VII of 1865...	An Act to give effect to rules for the management and preservation of Government forests.	So much as has not been repealed.
Act VII of 1869...	An Act to give validity to certain rules relating to forests in British Burma.	The whole.
Act XIII of 1873	An Act to amend the law relating to timber floated down the rivers of British Burma.	So much as has not been repealed.
Regulation IX of 1874.	The Arakan Hill District Laws Regulation, 1874.	So far as it relates to Acts VII of 1865 and VII of 1869.
	The Rules for the better management and preservation of the Government Forests in British Burma, dated the second day of August, 1865.	The whole.

R. J. CROSTHWAITE,

Offg. Secretary to the Government of India.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 7th September, 1881, and is hereby promulgated for general information :—

ACT NO. XX OF 1881.

THE SINDH INCUMBERED ESTATES ACT, 1881.

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An Act to amend the law providing for the relief of Jágírdárs and Zamíndárs in Sindh.

WHEREAS it is expedient to amend the law providing for the relief of Jágírdárs and Zamíndárs in Sindh ; It is hereby enacted as follows :— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Sindh Incumbered Estates Act, 1881"; and it shall come into force on the passing thereof. Short title. Commencement.

2. Act No. XIV of 1876 (*to relieve from Incumbrances the estates of Jágírdárs and Zamíndárs in Sindh*) is repealed ; but all applications, appointments and rules made, all notices published and all other things duly done under the said Act shall be deemed to have been respectively made, published and done under this Act. Repeal of Act No. XIV of 1876.

3. In this Act— Interpretation-clause.

"Jágír land" includes also a share held hereditarily of the revenues of a Government village, but does not include *siri* or *mámul* or garden grants : "Jágír land":

"Jágírdár" means a person who, or whose ancestor, was found in possession of jágír land in Sindh on the seventeenth day of February, 1843, and to whom the said land, or a portion of the same, or other land in lieu thereof, has been continued by the British Government, and to whom, or to whose ancestor, a sanad has been, or hereafter may be, granted confirming such continuance : "Jágírdár":

"Zamíndár" means a person holding lands in Sindh on the aggregate of which he or his ancestor has been assessed by the Government, on account of land-revenue for any one of the five revenue years next before the fourteenth day of September, 1876, a sum not less than three hundred rupees : "Zamíndár":

"Commissioner" means the Commissioner in Sindh. "Commissioner."

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

4. At any time within six months after the passing of this Act, any jágírdár or zamíndár, Application for the benefit of this Act.

or any person who would be sole heir or one of the heirs to such jágírdár or zamíndár if he then died intestate,

may apply, in writing, to the Commissioner, stating that such jágírdár or zamíndár is subject to debts or liabilities, other than debts due, or liabilities incurred, to Government, or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case.

When any jágírdár, zamíndár or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

5. When any such application is made by or on behalf of a jágírdár, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities, and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same. Order to inquire.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the Governor of Bombay in Council in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

6. When an inquiry has been directed under section five, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immoveable, to meet the same, as the Commissioner, or the said officer subject to his control, may require. Verified statement to be submitted.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code. False averments in statement.

7. The officer so appointed, after making inquiry, shall submit a report of the proceedings to the Commissioner. Report of inquiry and proceedings thereon.

On receipt of such report, the Commissioner may (*a*) direct a further inquiry ; or (*b*) dismiss the application ; or (*c*), by order published in the *Sindh Official Gazette*, appoint an officer (hereinafter called the manager) to manage the immoveable property of the debtor, and to arrange for the liquidation of his debts in manner hereinafter provided.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

8. Such order (hereinafter called "the order of management") shall extend to all immoveable property of or to which the debtor is on the date of its "Order of management;" to what it extends.

publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject, or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided.

The management shall be deemed to commence from the date on which the order is published. Commencement of management.

9. On the publication of the order of management the following consequences shall ensue :— Effect of order of management.

First, all proceedings then pending in any civil Court in British India in respect to the debts and liabilities mentioned in section eight shall be stayed ; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended ; Stay of pending proceedings, &c.

Secondly, so long as the management continues, no fresh proceedings, processes, executions or attachments shall be instituted in or issued by any civil Court in British India in respect of such debts and liabilities ; Bar of fresh proceedings.

Thirdly, so long as the management continues, the debtor shall be incompetent— The debtor incompetent—

(*a*) to enter into any contract involving him in pecuniary liability, or to contract debts,

(*b*) to mortgage, charge, lease or alienate the property under management or any part thereof, or to encumber or alienate property under management.

(*c*) to grant valid receipts for the rents and profits arising or accruing therefrom : to grant receipts for rent thereof.

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties ;

Fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease or alienate such property or any part thereof.

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management, Manager to have powers of owner and to receive rents and profits,

and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by a jágírdár or zamíndár, as the case may be, all the powers possessed by a Collector under the law for the time being in force for the recovery of land-revenue due to Government : to have powers of a Collector for their recovery.

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years, to take effect in possession.

11. From the sums received or recovered under section ten, the manager shall pay— Manager to pay therefrom—

First, the costs of the management, including the costs of necessary repairs ; costs of management and repairs,

Secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management ; Government revenue, &c.,

Thirdly, the rent (if any) due to the jágírdár or other superior holder in respect of the said property ; rent due to superior holder,

Fourthly, such periodical allowances as the Commissioner may from time to time fix for the maintenance of the debtor and his family ; allowance for maintenance of debtor,

Fifthly, the cost of such improvements of the said property as he thinks necessary, and are approved by the Commissioner. cost of improvements, &c.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section eight other than those so due or incurred to Government, and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act. Residue how disposed of.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. On the publication of the order of management, the manager shall publish in the *Sindh Official Gazette* a notice in English and Sindhí, calling upon all persons having claims against the debtor, or the property under management, to notify the same in writing to such manager within six months from the date of the publication. Notice to claimants against debtor.

He shall also cause copies of such notice to be exhibited at the mukhtiárkárs' kachahrís in the district in which the said property lies, and at such other places as he thinks fit. Copies of notice to be exhibited.

13. Every such claimant shall, along with his claim, present full particulars thereof. Claim to contain full particulars.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim. Documents to be given up.

If the document be an entry in any book, the claimant shall produce the book to the manager, together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant. Entries in books.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Exclusion of documents not produced.

14. Every such claim (other than claims of the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section nineteen, clause (*d*), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged:

Claim not duly notified to be barred.

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section twelve, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

Provision for admission of claims within further period of six months.

15. The manager shall inquire into the history and merits of every claim received under sections twelve and fourteen, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

Determination of debts and liabilities.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

Power to rank debts and to fix interest.

17. When the total amount of the debts and liabilities (including those due and incurred to Government) has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) showing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Scheme for liquidation.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section eleven, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act; and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

Provisions of scheme.

Proceedings of Commissioner on submission of scheme.

18. The Commissioner may

(*a*) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(*b*) sanction any liquidation-scheme or any revised liquidation-scheme submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

19. At any time before he has sanctioned a liquidation-scheme under section eighteen, the Commissioner may, by an order published in the *Sindh Official Gazette*, direct that on a date fixed by such order the management shall be relinquished.

Power to relinquish management.

On the date so fixed—

(*a*) the management shall terminate;

(*b*) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section ten;

(*c*) any residue of the rents and profits of the said property retained under the last clause of section eleven shall be paid to him; and

(*d*) the proceedings, processes, executions and attachments stayed and suspended under section nine, and the debts and liabilities barred by section fourteen, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the local Government may from time to time by rule direct; and thereupon—

Effects of sanctioning scheme.

1*st*, all proceedings, processes, executions and attachments stayed or suspended under section nine shall be for ever barred, and

2*nd*, every debt or liability due or owing to any person which was proveable before the manager shall be extinguished; and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue year.

Power to remove mortgagee in possession.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV of this Act.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager, with the sanction of the Commissioner, may inquire into the sufficiency of the consideration for which the lease was given; and if such consideration appear to him insufficient, may by order, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and in default of such payment the lease shall be cancelled.

Power to inquire into consideration given for leases.

23. Subject to the rules made under section thirty-one, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

Power to lease.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme—

Power to raise money by mortgage or sale.

(*a*) by demising by way of mortgage the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(*b*) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(*c*) by borrowing money from Government at such rate of interest as appears reasonable to the local Government.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

Manager's receipt to be a discharge.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (*c*) of section twenty-four, together with the interest (if any) due thereon, have been paid and discharged, the manager shall publish in the *Sindh Official Gazette* a notice fixing a date for the termination of the management.

Termination of management.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section twenty-four, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections ten, twenty-three and twenty-four.

Restoration of owner.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided—

Death of debtor during management.

1*st*, the management shall continue and proceed in all respects as if such debtor were still living;

2*ndly*, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (*b*) and (*c*) of section nine; and

3*rdly*, no civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

28. When a jágírdár or zamíndár has been restored under section twenty-six to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such jagírdár or zamíndár shall be valid as to any time beyond his natural life.

Mortgages, &c., made by restored jágírdár valid only for his life.

CHAPTER VI.

OF APPEAL AND REVISION.

29. An appeal against any decision or order under sections fourteen, fifteen, sixteen and twenty-two, and imposing a fine or imprisonment in exercise of the powers conferred by section thirty-five, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order.

Appeal.

There shall be no appeal against the decision of the Commissioner on such appeal.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

Power to call for proceedings and pass order thereon.

CHAPTER VII.

MISCELLANEOUS.

31. The Commissioner, with the previous sanction of the Governor of Bombay in Council, may, from time to time, make rules consistent with this Act—

Power to make rules.

(*a*) to regulate the security to be required from subordinate officers under this Act;

(*b*) to regulate the procedure in all cases under this Act;

(*c*) for the guidance of officers enquiring into and determining on claims under Chapter IV of this Act; and in particular as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determin-

ation, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

(*d*) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities; and

(*e*) generally to carry out the provisions of this Act.

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

Power to appoint new manager.

32. Whenever the Commissioner thinks fit, he may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

Managers to be public servants.

33. Every manager appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Investigation to be deemed a judicial proceeding.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

Power to summon witnesses and compel production of documents.

35. For the purposes of this Act, the manager may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible, in the same manner, as is provided in the case of a civil Court by the Code of Civil Procedure.

Bar of suits.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

Saving of jurisdiction of Courts in Sindh in respect of certain suits.

37. Nothing in this Act precludes the Courts in Sindh having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 7th September, 1881, and is hereby promulgated for general information:—

ACT No. XXI OF 1881.

THE BROACH AND KAIRA INCUMBERED ESTATES ACT, 1881.

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An Act to amend the law providing for the relief of Thákurs in the Districts of Broach and Kaira.

WHEREAS it is expedient to amend the law providing for the relief of Thákurs in the Districts of Broach and Kaira; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Broach and Kaira Incumbered Estates Act, 1881":

Short title.

and it shall come into force on the passing thereof.

Commencement.

2. Act No. XIV of 1877 (*to relieve from Incumbrances the estates of Thákurs in Broach and Kaira*), except the last three sections, is repealed;

Partial repeal of Act No. XIV of 1877.

But all applications, appointments and rules made, all notices published and all other things duly done under the said Act or under Act No. XV of 1871 (*to relieve from Incumbrances the estates of Thákurs in Broach*) shall be deemed to have been respectively made, published and done under this Act.

In section 40 of the said Act No. XIV of 1877, for the words "the said Taluqdárí Settlement Officer," the words "the Taluqdárí Settlement Officer mentioned in the Broach and Kaira Incumbered Estates Act, 1881, section seven," shall be substituted.

Interpretation-clause.

3. In this Act—

"Thákur" means also taluqdár, jágírdár and kasbátí, and such other classes of holders of estates as the local Government may, with the previous sanction of the Governor General in Council, declare to be Thákurs for the purposes of this Act:

"Thákur":

"Heir" means the person for the time being entitled as heir to a Thákur:

"Heir":

"Commissioner" means the Revenue Commissioner of the Northern Division of the Presidency of Bombay.

"Commissioner."

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

4. At any time within six months after the passing of this Act, any Thákur, or any person who would be sole heir or one of the heirs to such Thákur if he then died intestate, may apply, in writing, to the Commissioner stating that such Thákur is subject to debts or liabilities, other than debts due, or liabilities incurred, to Government, or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case.

Application for benefit of Act.

When any Thákur or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

5. When any such application is made by or on behalf of a Thákur, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same.

Order to inquire.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the Governor of Bombay in Council in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

6. When an inquiry has been directed under section five, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immoveable, to meet the same, as the Commissioner, or the said officer subject to his control, may require.

Verified statement to be submitted.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code.

False averments in statement.

7. The officer so appointed, after making inquiry, shall submit a report of his proceedings to the Commissioner.

Report of inquiry and proceedings thereon.

On receipt of such report, the Commissioner may—

(*a*) direct a further inquiry, or

(*b*) dismiss the application, or

(*c*) by order published in the *Bombay Government Gazette*, direct that the immoveable property of the debtor shall be managed, and that his debts shall be liquidated, in the manner hereinafter provided, by a manager.

The Taluqdárí Settlement-officer for the time being shall, unless the local Government in any case otherwise directs, be such manager.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

8. Such order (hereinafter called "the order of management") shall extend to all immoveable property of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject, or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided.

"Order of management;" to what it extends.

The management shall be deemed to commence from the date on which the order is published.

Commencement of management.

9. On the publication of the order of management the following consequences shall ensue:—

Effect of order of management.

First, all proceedings then pending in any civil Court in British India in respect to the debts and liabilities mentioned in section eight shall be stayed; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended;

Stay of pending proceedings, &c.

Secondly, so long as the management continues, no fresh proceedings, processes, executions or attachments shall be instituted in or issued by any civil Court in British India in respect of such debts and liabilities;

Bar of fresh proceedings.

Thirdly, so long as the management continues, the debtor shall be incompetent—

The debtor incompetent—

(*a*) to enter into any contract involving him in pecuniary liability, or

to contract debts,

(*b*) to mortgage, charge, lease or alienate the property under management or any part thereof, or

to incumber or alienate property,

(*c*) to grant valid receipts for the rents and profits arising or accruing therefrom:

to grant receipts for rent.

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties;

Fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease or alienate such property or any part thereof.

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management,

Manager to have powers of owner and to receive rents and profits;

and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by a Thákur, all the powers possessed by a Collector, under the law for the time being in force, for securing and recovering land-revenue due to Government:

to have powers of Collector for their recovery.

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years, to take effect in possession.

11. From the sums received or recovered under section ten, the manager shall pay—

Manager to pay therefrom—

First, the costs of the management, including the costs of necessary repairs;

costs of management and repairs,

Secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management;

Government revenue, &c.,

Thirdly, the rent (if any) due to any superior holder in respect of the said property;

rent due to superior holder,

Fourthly, such periodical allowance as the Commissioner may from time to time fix for the maintenance and other necessary expenses of the debtor and of such members of his family as the Commissioner directs;

allowance for maintenance and expenses of debtor and family,

Fifthly, the cost of such improvements of the said property as he thinks necessary, and as are approved by the Commissioner.

cost of improvements, &c.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section eight other than those so due or incurred to Government, and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act.

Residue how disposed of.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. On the publication of the order of management, the manager shall publish in the *Bombay Government Gazette* a notice in English and Gujrátí calling upon all persons having claims against the debtor or the property under management to notify the same in writing to such manager within six months from the date of the publication.

Notice to claimants against debtor.

He shall also cause copies of such notice to be exhibited at the Mámlatdárs' kachahrís in the district in which the said property lies, and at such other places as he thinks fit.

Copies of notice to be exhibited.

13. Every such claimant shall, along with his claim, present full particulars thereof.

Claim to contain full particulars.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.

Documents to be given up.

If the document be an entry in any book, the claimant shall produce the book to the manager together with a copy of the entry on which he relies,

Entries in books.

The manager shall mark the book for the purpose of identification, and after examining and comparing the copy with the original, shall return the book to the claimant.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Power to exclude documents not produced with claim.

14. Every such claim (other than claims of the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section nineteen, clause (*d*), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged:

Claim not duly notified to be barred.

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section twelve, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

Admission of claims within further period of six months.

15. The manager shall inquire into the history and merits of every claim received under sections twelve and fourteen, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

Determination of debts and liabilities.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

Power to rank debts and to fix interest.

17. When the total amount of the debts and liabilities (including those due and incurred to Government) has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) shewing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Scheme for liquidation.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section eleven, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act, and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

Provisions of scheme.

18. The Commissioner may—

Proceedings of Commissioner on submission of scheme.

(*a*) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(*b*) sanction any liquidation-scheme, or any revised liquidation-scheme, submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

19. At any time before he has sanctioned a liquidation-scheme under section eighteen, the Commissioner may, by an order published in the *Bombay Government Gazette*, direct that on a date fixed by such order the management shall be relinquished.

Power to relinquish management.

On the date so fixed—

(*a*) the management shall terminate;

(*b*) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section ten;

(*c*) any residue of the rents and profits of the said property retained under the last clause of section eleven shall be paid to him; and

(*d*) the proceedings, processes, executions and attachments stayed and suspended under section nine, and the debts and liabilities barred by section fourteen, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the local Government may from time to time by rule direct; and thereupon—

Effects of sanctioning scheme.

1*st*, all proceedings, processes, executions and attachments stayed or suspended under section nine shall be for ever barred, and

2*nd*, every debt or liability due or owing to any person which was proveable before the manager shall be extinguished, and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue year.

Power to remove mortgagee in possession.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV of this Act.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager may inquire into the sufficiency of the consideration for which the lease was given; and if such consideration appear to him insufficient, may by order, with the consent of the Commissioner, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and in default of such payment, the lease shall be cancelled.

Power to inquire into consideration given for leases.

23. Subject to the rules made under section thirty-one, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

Power to lease.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme—

Power to raise money by mortgage or sale.

(*a*) by mortgaging the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(*b*) by charging the whole or any part of such property; or

(*c*) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(*d*) by borrowing money from Government at such rate of interest as appears reasonable to the local Government.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

Manager's receipt a discharge.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (*d*) of section twenty-four, together with the interest (if any) due thereon, have been paid and discharged as therein provided, or in such other manner as the Commissioner thinks fit, the manager shall publish in the *Bombay Government Gazette* a notice fixing a date for the termination of the management.

Termination of management.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section twenty-four, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections ten, twenty-three and twenty-four.

Restoration of owner.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided—

Death of debtor during management.

1*st*, the management shall continue and proceed in all respects as if such debtor were still living;

2*ndly*, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (*b*) and (*c*) of section nine; and

3*rdly*, no civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management, for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

28. When a Thákur has been restored under section twenty-six to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such Thákur, shall be valid as to any time beyond his natural life.

Mortgages, &c., made by restored Thákur valid only for his life.

CHAPTER VI.

OF APPEAL AND REVISION.

29. An appeal against any decision or order under sections fourteen, fifteen, sixteen and twenty-two, or imposing a fine or imprisonment in exercise of the powers conferred by section thirty-five, shall lie to the Commissioner, if preferred within six weeks from the date of such decison or order.

Appeal.

There shall be no appeal against the decision of the Commissioner on such appeal.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

Power to call for proceedings and pass order thereon.

CHAPTER VII.

MISCELLANEOUS.

31. The local Government may, from time to time, make rules consistent with this Act—

Power to make rules.

(*a*) to regulate the security to be required from subordinate officers under this Act;

(*b*) to regulate the procedure in all cases under this Act;

(*c*) for the guidance of officers enquiring into and determining on claims under Chapter IV of this Act; and in particular as to the allowance of interest (if any) on each of the principal debts and

liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

(*d*) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities; and

(*e*) generally to carry out the provisions of this Act.

Such rules shall be published in the *Bombay Government Gazette*, and when so published shall have the force of law.

Power to appoint new manager.

32. The local Government may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

Managers and their agents to be public servants.

33. Every manager appointed under this Act and every agent of such manager shall be deemed a public servant within the meaning of the Indian Penal Code.

Investigation, a judicial proceeding.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

Power to summon witnesses and compel production of documents.

35. For the purposes of this Act, the manager and any officer making an inquiry under section five may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible, in the same manner, as is provided in the case of a civil Court by the Code of Civil Procedure.

Bar of suits.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

Saving of jurisdiction of Courts in Broach and Kaira in respect of certain suits.

37. Nothing in this Act precludes the Courts in Broach and Kaira having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

Exemption of certain Thákurs from certain provisions of Act.

38. Nothing in section nine shall be deemed to render any of the following Thákurs, namely, the Thákur of Ahmod, the Thákur of Sarod, the Thákur of Kerwára, the Thákur of Dehej, and the Thákur of Janiádra incompetent to enter into contracts involving him in pecuniary liability, nor shall anything in section twenty-eight apply to any of the said Thákurs:

Provided that, if any such Thákur has, since the scheme for the settlement of his debts and liabilities was approved under section 11 of the said Act No. XV of 1871, entered into any contract involving him in pecuniary liability exceeding the average annual income derived during the previous five years from his immoveable property after deducting therefrom the land-tax and other dues of Government, the local Government may, by notification in the *Bombay Government Gazette*, declare that the exemption made by the former part of this section shall cease in his case, and thereupon such exemption shall cease accordingly.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY SEPTEMBER 17, 1881.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 31st August, 1881, and is hereby promulgated for general information:—

ACT No. XIX OF 1881.

THE BURMA FOREST ACT, 1881.

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SCHEDULE.—ENACTMENTS REPEALED.

An Act to amend the law relating to Forests, Forest-produce, and the duty leviable on Timber in British Burma.

Preamble.

WHEREAS it is expedient to amend the law relating to forests, forest-produce, and the duty leviable on timber in British Burma; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Burma Forest Act, 1881":

Local extent.

It extends to all the territories for the time being administered by the Chief Commissioner of British Burma, provided that the Chief Commissioner may, by notification in the official Gazette, exempt any place from its operation; but not so as to affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings

commenced in such place before such exemption; and

Commencement.

it shall come into force on such day as the Chief Commissioner may, by notification in the official Gazette, direct.

Repeal of enactments.

2. On and from such day the enactments and rules mentioned in the schedule hereto annexed shall be repealed to the extent mentioned in the third column of the same schedule.

Interpretation-clause.

3. In this Act, and in all rules made hereunder, unless there is something repugnant in the subject or context,—

"Forest-officer." means all persons appointed by name or as holding an office by or under the orders of the Governor General in Council or the Chief Commissioner to be—

Conservators, Deputy Conservators, Assistant Conservators, Sub-Assistant Conservators, Forest-rangers, Foresters, or Forest-guards, or to discharge any function of a Forest-officer under this Act or any rule made hereunder:

"tree": "tree" includes also bamboos, stumps and brushwood:

"timber": "timber" includes trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed out for any purpose or not:

"forest-produce." "forest-produce" includes the following things when found in, or brought from a forest (that is to say):—

minerals (including limestone and laterite), surface-soil, trees, timber, plants, grass, peat, canes, creepers, reeds, leaves, moss, flowers, fruits, seeds, roots, juice, catechu, bark, caoutchouc, gum, wood-oil, resin, varnish, lac, charcoal, honey and wax;

"forest-offence": "forest-offence" means an offence punishable under this Act or any rule made hereunder:

"cattle": "cattle" includes also elephants, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids:

"river": "river" includes also streams, canals, creeks and other channels, natural or artificial:

"land at the disposal of Government.": "land at the disposal of Government" means

(*a*) land in respect of which no person has acquired the status of a land-holder under section seven of the Burma Land and Revenue Act, 1876,

(*b*) land in respect of which no person has acquired any right created by grant or lease made by, or on behalf of, the British Government.

"Magistrate": "Magistrate" means a Magistrate of the first or second class and includes a Magistrate of the third class when he is specially empowered by the Chief Commissioner to try forest-offences.

Saving of rights of profit from the Burma Land and Revenue Act, 1876.

4. Nothing in the Burma Land and Revenue Act, 1876, shall be deemed to affect or ever to have affected any right by which one person is entitled to remove and appropriate, for his own profit, any part of the soil belonging to another person or to the Government, or anything growing in, or attached to, or subsisting upon, the land of another person or of the Government.

CHAPTER II.

OF RESERVED FORESTS.

Power to reserve forests.

5. The Chief Commissioner may constitute any land at the disposal of Government, a reserved forest in manner hereinafter provided.

Notification by Chief Commissioner.

6. Whenever it is proposed to constitute any land a reserved forest, the Chief Commissioner shall publish a notification in the official Gazette—

(*a*) specifying as nearly as possible the situation and limits of such land;

(*b*) declaring that it is proposed to constitute such land a reserved forest;

(*c*) appointing an officer (hereinafter called "the Forest-Settlement-officer") to inquire into and determine the existence, nature and extent of any rights claimed by, or alleged to exist in favor of, any person in or over any land comprised within such limits, and any claims relating to the practice within such limits of toungya cultivation, and to deal with the same as provided in this chapter.

The officer appointed under clause (*c*) of this section shall ordinarily be a person other than a Forest-officer; but a Forest-officer may be appointed by the Chief Commissioner to assist the Forest-Settlement-officer in the inquiry prescribed by this chapter.

Proclamation by Forest-Settlement-officer.

7. When a notification has been published under section six, the Forest-Settlement-officer shall publish in the language of the country, at the head-quarters of each township in which any portion of the land comprised in such notification is situate, and in every town and village in the neighbourhood of such land, a proclamation—

(*a*) specifying as nearly as possible the situation and limits of the proposed forest;

(*b*) setting forth the substance of the provisions of section eight;

(*c*) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and

(*d*) fixing a period of not less than three months from the date of publishing such proclamation, and requiring every person claiming any right or making any claim referred to or mentioned in section six either to present to such officer within such period a written notice specifying, or to appear before him within such period and state, the nature of such right or claim.

Bar of accrual of forest-rights.

8. During the interval between the publication of such proclamation and the date fixed by the notification declaring the forest to be reserved as hereinafter provided, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by, or on behalf of, the Government or some person in whom such right, or power to create the same, was vested when the

Prohibition of building, clearing, &c.

proclamation was published; and, on such land, no new house shall be built or plantation formed, no fresh clearings for cultivation or for any other purpose shall be made, and no trees shall be cut for the purpose of trade or manufacture, except as hereinafter provided.

Nothing in this section shall be deemed to prohibit any act done with the permission in writing of the Forest-Settlement-officer, or any clearings lawfully made for toungya cultivation by persons in the habit of practicing such cultivation on such land.

Inquiry by Forest-Settlement-officer.

9. The Forest-Settlement-officer shall take down in writing all statements made under section seven, and shall inquire into all claims made under that section, and the existence of any right or practice mentioned in section six in respect of which no claim is made. The Forest-Settlement-officer shall at the same time consider and record any objection which the Forest-officer (if any), appointed under section six to assist him, may make to any such claim or to the existence of any such right or practice.

Powers of Forest-Settlement-officer.

10. For the purposes of such inquiry, the Forest-Settlement-officer may exercise the following powers (that is to say):—

(*a*) the powers of a demarcation-officer under The Burma Boundaries Act, 1880; and

(*b*) the powers conferred on a Civil Court by the Code of Civil Procedure for compelling the attendance of witnesses and the production of documents.

Claims relating to practice of toungya cultivation how dealt with.

11. In the case of a claim relating to the practice of toungya cultivation, the Forest-Settlement-officer shall pass an order specifying the particulars of such claim and permitting, or refusing to permit, such practice wholly or in part.

If such practice is permitted wholly or in part, the Forest-Settlement-officer may—

(*a*) alter the limits of the proposed reserved forest so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants; or

(*b*) cause certain portions of the reserved forest to be separately demarcated, and give permission to the claimants to practice toungya cultivation under such rules and conditions as he may prescribe.

No right to practice toungya cultivation shall be deemed to be conferred by an order under this section permitting such practice, and, except with the sanction of the Chief Commissioner, such cultivation shall only be practiced by the person to whom such permission is granted.

Power to acquire land over which right is claimed.

12. In the case of a claim to a right in or over any land other than the following rights:—

(*a*) a right of way,

(*b*) a right to a water-course, and to use of water,

(*c*) a right of pasture, or to forest-produce,

the Forest-Settlement-officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part.

If such claim is admitted wholly or in part, the Forest-Settlement-officer may (1) come to an agreement with the claimant for the surrender of the right; or, (2) exclude the land from the limits of the proposed forest; or, (3) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1870.

For the purpose of so acquiring such land—

(i) the Forest-Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1870;

(ii) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section nine of that Act;

(iii) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and

(iv) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

Order on claims to rights of way, water-course, pasture, and to forest-produce.

13. In the case of a claim to rights of the kind specified in clauses (*a*), (*b*) and (*c*) of section twelve, the Forest-Settlement-officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part.

When a claim to any such right is admitted, if the right is for the beneficial enjoyment of any land or buildings, he shall record the designation, position and area of such land, and the designation and position of such buildings.

Where the right is a right to forest-produce, he shall also record whether the forest-produce obtained by the exercise of such right may be sold or bartered, and such other particulars as may be necessary in order to define the nature, incidents and extent of the right.

Provision for rights of pasture or to forest-produce admitted.

14. When the Forest-Settlement-officer has admitted wholly or in part, and recorded under section thirteen, a claim to a right of pasture or to forest-produce, he shall as far as possible provide for the exercise of such right—

(*a*) by altering the limits of the proposed reserved forest so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimant;

(*b*) by recording an order continuing to the claimant a right of pasture or to forest-produce (as the case may be), subject to such rules as may be prescribed by the Chief Commissioner.

The order passed under clause (*b*) shall record, as far as practicable, the number and description of the cattle which the claimant is from time to time entitled to graze, the local limits within which, and the seasons during which, such pasture is permitted; or

the quantity of timber or other forest-produce which the claimant is authorized to take or receive, the local limits within which, the season during which, and the mode in which, the taking of such produce is permitted; and

such other particulars as may be required in order to define the extent of the right which is continued, and the mode in which it may be exercised.

Commutation of such rights.

15. Whenever any right of pasture or to forest-produce admitted under section thirteen is not provided for in one of the ways prescribed in section fourteen, the Forest-Settlement-officer shall, subject to such rules as the Chief Commissioner may prescribe in this behalf, commute such right by paying a sum of money in lieu thereof, or, with the consent of the claimant, by the grant of land, or in such other manner as such officer thinks fit.

For the purpose of granting land under this section, the Forest-Settlement-officer shall be deemed to be an Assistant Commissioner in charge of a sub-division.

Appeal from order passed under foregoing sections.

16. Any person who has made a claim under this chapter may, within three months from the date of any order passed on such claim by the Forest-Settlement-officer under section eleven, twelve, thirteen, fourteen or fifteen, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Deputy Commissioner, as the Chief Commissioner may, by notification in the official Gazette, appoint by name, or as holding an office, to hear appeals from such orders.

Appeal under section 16.

17. Every appeal under section sixteen shall be made by petition in writing, and may be delivered to the Forest-Settlement-officer, who shall forward it without delay to the officer competent to hear the same.

Every such appeal shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue, and the order passed thereon by such officer shall be final, except as hereinafter provided.

Hearing of appeals.

Notification declaring forest reserved.

18. When the following events have occurred (namely):—

(*a*) the period fixed under section seven for preferring claims has elapsed, and all claims (if any) made within such period have been disposed of by the Forest-Settlement-officer, and

(*b*) if such claims have been made, the period fixed by section sixteen for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer, and

(*c*) all lands (if any) to be included in the proposed forest, which the Forest-Settlement-officer has, under section twelve, elected to acquire under the Land Acquisition Act, 1870, have become vested in the Government under section sixteen of that Act,

the Chief Commissioner may publish a notification in the official Gazette, specifying the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date fixed by such notification.

From the date so fixed, such forest shall be deemed to be a reserved forest.

Extinction of rights not claimed.

19. Rights in respect of which no claim has been preferred under section seven, and of the existence of which no knowledge has been acquired by enquiry under section nine, shall thereupon be extinguished, unless, before the publication of such notification, the person claiming them has satisfied the Forest-Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section seven.

Publication of translation of such notification in neighbourhood of forest.

20. The Deputy Commissioner of the district in which the forest is situate shall, before the date fixed by such notification, cause a translation thereof in the language of the country to be published in the manner prescribed for the proclamation under section seven.

Power to revise arrangement made under section 11, 14 or 17.

21. The Chief Commissioner may, within five years from the publication of any notification under section eighteen, revise any arrangement made under section eleven, fourteen or seventeen, and may rescind or modify any order made under this chapter, and direct that any one of the proceedings specified in section fourteen be taken in lieu of any other of such proceedings, or that the permission granted under section eleven or rights admitted under section thirteen be commuted under section fifteen.

No right acquired over reserved forest except as here provided.

22. No right of any description shall be acquired in or over a reserved forest, except by succession, or under a grant or contract in writing made by, or on behalf of, the Government, or some person in whom such right, or the power to create such right, was vested when the notification under section eighteen was published.

Rights not to be alienated without sanction.

23. Notwithstanding anything herein contained, no right continued under section fourteen shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the Chief Commissioner: provided that, when any such right is continued for the beneficial enjoyment of any land or house, it may be sold or otherwise alienated with such land or house without such sanction.

No timber or other forest-produce obtained in exercise of any right so continued shall be sold or bartered except to the extent defined by the order recorded under section fourteen.

Power to stop ways and water-courses in reserved forest.

24. Any Forest-officer may, from time to time, with the previous sanction of the Chief Commissioner or of any officer duly authorized in that behalf, stop any public or private way or water-course in a reserved forest: provided that for the way or water-course so stopped, another way or water-course which in the opinion of the Chief Commissioner is equally convenient, already exists, or has been provided or constructed by such Forest-officer.

Penalties for trespass or damage in reserved forests.

25. Any person who in a reserved forest—

(*a*) trespasses, or pastures cattle, or permits cattle to trespass,

(*b*) causes any damage by negligence in felling any tree or cutting or dragging any timber,

(*c*) strips off the bark or leaves from or otherwise damages any tree,

(*d*) in contravention of any rules made by the Chief Commissioner, hunts, shoots, fishes, poisons water, or sets traps or snares,

shall be punished with fine which may extend to fifty rupees, or when the damage resulting from his offence amounts to more than twenty-five rupees, to double the amount of such damage.

Acts prohibited in such forests.

26. Any person who—

(*a*) makes any fresh clearing prohibited by section eight, or

(*b*) sets fire to a reserved forest, or kindles any fire or, in contravention of any rules made by the Chief Commissioner, leaves any fire burning in such manner as to endanger the same,

or who, in a reserved forest,

(*c*) kindles, keeps or carries any fire except at such seasons and in such manner as a Forest-officer specially empowered in this behalf may from time to time notify,

(*d*) fells, girdles, lops, taps, or burns any tree,

(*e*) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce,

(*f*) clears or breaks up any land for cultivation or any other purpose,

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

Acts excepted from prohibition contained in sections 25 and 26.

27. Nothing in section twenty-five or section twenty-six shall be deemed to prohibit (*a*) any act done in accordance with any rule made by the Chief Commissioner or with the permission in writing of a Forest-officer, specially empowered to grant such permission; or (*b*) any practice of toungya cultivation permitted under section eleven; or (*c*) the exercise of any right continued under section fourteen or created by grant or contract in the manner described in section twenty-two.

Penalty for offences committed by persons having rights in reserved forests.

28. Whenever fire is caused wilfully or by gross negligence in a reserved forest by any person having rights in such forest, or having permission to practice toungya cultivation therein, or by any person in his employment, or whenever any person having rights in such forest contravenes the provisions of section twenty-three, the Chief Commissioner may (notwithstanding that a penalty has been inflicted under section twenty-six in respect of such fire) direct that in such forest or any specified portion thereof the exercise of all or any of the rights of pasture or to forest-produce shall be extinguished or suspended for such period as he thinks fit, and may withdraw any permission to practice toungya cultivation in such forest or portion.

Power to declare forest no longer reserved.

29. The Chief Commissioner may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be reserved.

From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

Forests reserved under former rules.

30. Any forest which has been declared a reserved forest under any rules in force previous to the day on which this Act comes into force shall be deemed to have been reserved hereunder;

and all questions decided, orders issued and records prepared in connection with the reservation of such forest shall be deemed to have been decided, issued and prepared hereunder, and all provisions of this Act relating to reserved forests shall apply to such forest.

CHAPTER III.

OF VILLAGE-FORESTS.

Constitution of village-forests.

31. The Chief Commissioner may by notification in the official Gazette constitute any land at the disposal of Government a village-forest for the benefit of any village-community or group of village-communities, and may in like manner vary or cancel any such notification.

Every such notification shall specify the limits of such village-forest.

Teak trees in village-forest the property of Government.

32. All teak trees in a village-forest shall be deemed to be the property of Government; and no person shall cut, mark, lop, girdle, or injure by fire or otherwise, any such trees without the permission in writing of a Forest-officer specially empowered to grant such permission.

Power to make rules for village-forests.

33. The Chief Commissioner may make rules for regulating the management of village-forests, prescribing the conditions under which the community or group of communities for the benefit of which any such forest is constituted may be provided with timber or other forest-produce or with pasture, and their duties in respect of the protection and improvement of such forest.

The Chief Commissioner may, by such rules, declare any of the provisions of Chapter II of this Act to be applicable to village-forests.

Saving of private rights.

34. Nothing in this chapter shall be deemed to affect any existing rights of any person in or over any village-forest.

Power to inquire into and deal with such rights.

The Chief Commissioner may in any case direct that all claims to any such rights, other than the rights of the village-community or group of village communities for the benefit of which such village-forest is constituted, shall be inquired into, recorded and provided for in the manner prescribed by Chapter II of this Act.

CHAPTER IV.

OF THE PROTECTION OF CERTAIN TREES AND NATURAL PRODUCE.

Reserved trees.

35. All teak trees standing on any land not included in a reserved or village-forest shall be deemed to be the property of Government and shall be reserved trees.

The Chief Commissioner may by notification in the official Gazette—

(*a*) declare that any other trees or any specified class of other trees standing on any land at the disposal of Government shall, from a date to be fixed by such notification, be reserved trees;

(*b*) vary or cancel any such notification;

(*c*) declare that any teak trees standing on land other than land at the disposal of Government shall, from a date to be fixed by such notification, cease to be the property of Government and to be reserved trees.

Protection of reserved trees.

36. No person shall cut, mark, lop, girdle, tap, or injure by fire or otherwise, any reserved tree, except as provided by rules made by the Chief Commissioner in this behalf, or with the permission in writing of a Forest-officer specially empowered to grant such permission.

Whoever cuts, marks, lops, girdles, taps, or injures by fire or otherwise, any reserved tree in contravention of this section shall be punished with fine which may extend to twenty rupees, or when the damage resulting from his offence amounts to more than ten rupees, to double the amount of such damage.

Power to make rules generally.

37. No person shall make use of the pasturage or of the natural produce of any land at the disposal of Government and not included in a reserved or village-forest, except in accordance with rules which may be prescribed by the Chief Commissioner. Such rules may, with respect to such land,—

(*a*) regulate or prohibit the cutting of toungyas, or the issue of grants or leases by Government with respect to land on which teak trees are growing;

(*b*) regulate or prohibit the kindling of fires, and prescribe the precautions to be taken to prevent the spreading of fires;

(*c*) regulate or prohibit the cutting, sawing, conversion and removal of trees and timber, and the collection and removal of natural produce;

(*d*) regulate or prohibit the quarrying of stone, the boiling of cutch, or the burning of lime or charcoal;

(*e*) regulate or prohibit the cutting of grass and pasturing of cattle, and regulate the payments (if any) to be made for such cutting or pasturing;

(*f*) regulate or prohibit hunting, shooting, fishing, poisoning water and setting traps or snares;

(*g*) regulate the sale or free grant of timber or other natural produce; and

(*h*) prescribe, or authorize any Forest-officer to prescribe, subject to the control of the Chief Commissioner, the fees, royalties or other payments for such timber or other natural produce, and the manner in which such fees, royalties or other payments shall be levied, whether in transit, or partly in transit, or otherwise.

Penalties for acts in contravention of rules.

The Chief Commissioner may, by such rules, prescribe, as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

The Chief Commissioner may exempt any person or class of persons or any local area from the operation of any such rule, and may cancel such exemption.

Nothing in this chapter to prohibit acts done in certain cases.

38. Nothing in this chapter or in any rule made under this chapter shall be deemed to prohibit any act done with the permission in writing of a Forest-officer specially empowered to grant such permission, or in the exercise of any right.

CHAPTER V.

OF THE DUTY ON TIMBER.

Power to impose duty on timber.

39. The Chief Commissioner may levy a duty, in such manner, at such places, and at such rates, as he may prescribe by notification in the official Gazette, on all timber which is brought into British Burma from any place beyond the frontier of British Burma.

Power to fix value for *ad valorem* duty.

In every case in which such duty is directed to be levied *ad valorem*, the Chief Commissioner may, by like notification, fix the value on which such duty shall be assessed.

Duty on certain timber floated down the Attaran.

40. On all teak timber cut within the limits of the Attaran Forest and floated down the Attaran river, duty shall be levied at the following rates, that is to say:—

	Rs.	A.	P.	
On logs above five feet in girth	... 4	0	0	per log.
Ditto below „ „	... 2	0	0	„
On stem pieces ...	... 0	9	0	per piece.
On ship crooks ...	... 0	4	0	per crook.

These rates shall not apply to timber for which special rates have been fixed by any agreement entered into with Government.

Power to exempt timber from duty.

41. The Chief Commissioner may exempt any timber from the duty to which it is liable under section thirty-nine or section forty, and revoke such exemption.

Provisions of chapter not to limit purchase-money or royalty.

42. Nothing in this chapter shall be deemed to limit the amount (if any) chargeable as purchase-money or royalty on any timber.

CHAPTER VI.

OF THE CONTROL OF TIMBER IN TRANSIT.

Power to make rules to regulate transit of timber.

43. The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber in transit by land or water, is vested in the Chief Commissioner, and he may make rules to regulate the transit of all timber.

Such rules may (among other matters)—

(*a*) prescribe the routes by which alone timber may be imported into, exported from, or moved within, British Burma;

(*b*) prohibit the import and export or moving of such timber without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass;

(*c*) provide for the issue, production and return of such passes;

(*d*) fix, or authorize any Forest-officer to fix, subject to the control of the Chief Commissioner, the fees payable for such passes;

(*e*) in the case of timber formed into a raft or fastened to the shore, prohibit the loosening or the setting adrift of such timber by any person not the owner thereof, or not acting on behalf of such owner or of the Government;

(*f*) provide for the stoppage, reporting, examination and marking of timber in transit in respect of which there is reason to believe that any money is payable to Government or to which it is desirable, for the purposes of this Act, to affix a mark;

(*g*) establish, or authorize any Forest-officer to establish, subject to the control of the Chief Commissioner, stations to which such timber shall be taken by those in charge of it for examination, or for the realization of such money, or in order that such mark may be affixed to it; and the conditions under which such timber shall be brought to, stored at, and removed from, such station;

(*h*) provide for the management and control of such stations, and for regulating the appointment and duties of persons employed thereat;

(*i*) authorize the transport of timber the property of Government across any land, and regulate the compensation to be paid for any damage done by the transport of such timber;

(*j*) prohibit the closing up or obstruction of the channel or banks of any river used for the transit of timber, and the throwing of grass, brushwood, branches and leaves into any such river, or any other act which tends to cause the obstruction of such channel;

(*k*) provide for the prevention and removal of any obstruction in the channel or on the banks of any such river, and for recovering the cost of such prevention or removal, from the person, or by the sale of any timber, causing such obstruction;

(*l*) prohibit absolutely, or subject to conditions within specified local limits, the establishment of sawpits, the converting, cutting, burning, concealing, marking or supermarking of timber, the altering or effacing of any marks on the same, and possession or carrying of marking-hammers or other implements used for marking timber;

(*m*) regulate the use of property-marks for timber, and the registration of such marks; declare the circumstances in which the registration of any property-marks may be refused or cancelled; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

44. The Chief Commissioner may, by such rules, prescribe, as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

Penalties for breach of rules made under section 43.

In cases where the offence is committed after sunset and before sunrise, or after making preparation for resistance to the execution of any law or any legal process, or where the offender has been previously convicted of a like offence, the convicting Magistrate may inflict double the penalty prescribed for such offence.

45. In case of any accident or emergency involving danger to any property at any such station, every person employed at such station, whether by the Government or by any private person, shall render assistance to any Forest-officer or Police-officer demanding his aid in averting such danger and securing such property from damage or loss.

All persons bound to aid in case of accident at station.

CHAPTER VII.

OF THE COLLECTION OF DRIFT, STRANDED AND OTHER TIMBER.

46. All timber found adrift, beached, stranded or sunk,

all timber bearing marks which have not been registered under rules made under section forty-three,

all timber which has been supermarked, or on which the marks have been obliterated, altered or defaced by fire or otherwise, and

in such areas as the Chief Commissioner directs, all unmarked timber,

shall be deemed to be the property of Government unless and until any person establishes his right thereto as provided in this chapter.

Certain kinds of timber to be deemed property of Government until title thereto proved.

Such timber may be collected by any Forest-officer or other person entitled to collect the same, and may be brought to such stations as a Forest-officer specially empowered in this behalf may from time to time notify as stations for the reception of drift-timber.

Power to collect the same.

The Chief Commissioner may, by notification in the official Gazette, exempt any class of timber from the provisions of this section, and withdraw such exemption.

47. Public notice shall from time to time, as occasion may require, be given by a Forest-officer specially empowered in this behalf of timber collected under section forty-six. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than one month from the date on which such notice is given, a written statement of such claim.

Notice to claimants of drift-timber.

48. When any such statement is presented as aforesaid, the Forest-officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

Procedure on claim preferred to such timber.

If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Court and retain the timber pending the receipt of an order from such Court for its disposal.

Any person whose claim has been rejected under this section may, within two months from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation against the Government or against any Forest-officer on account of such rejection, or the

On rejection of claim to such timber, claimant may institute suit.

detention or removal of any timber, or the delivery thereof to any other person under this section.

No such timber shall be subject to process of any Civil Court until it has been delivered, or a suit brought under this section has been decided.

49. If no statement is presented in the manner and within the period prescribed by the notice issued under section forty-seven, or, where such statement having been so presented and the claim having been rejected, the claimant omits to institute a suit to recover possession of such timber within the further period mentioned in section forty-eight, the ownership of such timber shall vest in the Government free from all incumbrances; or, when such timber has been delivered to another person under section forty-eight, in such other person, free from all incumbrances not created by him.

Disposal of unclaimed timber.

50. No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer, or other person entitled to receive it, such sum on account thereof as may be due for salving, collecting, moving, storing and disposing of the same.

Payments to be made by claimant before timber is delivered to him.

51. The Chief Commissioner may make rules to regulate the following matters (namely):—

Power to make rules and prescribe penalties.

(*a*) the salving, collection and disposal of all timber mentioned in section forty-six;

(*b*) the use and registration of boats used in salving and collecting timber;

(*c*) the amount to be paid for salving, collecting, moving, storing and disposing of such timber; and

(*d*) the use and registration of hammers and other instruments to be used for marking such timber.

The Chief Commissioner may, by such rules, prescribe, as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

CHAPTER VIII.

PENALTIES AND PROCEDURE.

52. When there is reason to believe that a forest-offence has been committed in respect of any timber or forest-produce, such timber or produce, together with all tools, boats, carts and cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.

Seizure of property liable to confiscation.

Every officer seizing any property under this section shall place on such property, or the receptacle (if any) in which it is contained, a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Report to Magistrate.

Provided that when the timber or forest-produce with respect to which such offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

53. Upon the receipt of any such report, the Magistrate shall take such measures as may be necessary for the trial of the accused and the disposal of the property according to law.

Procedure thereupon.

54. When any person is convicted of a forest-offence, all timber or forest-produce in respect of which such offence has been committed, and all tools, boats, carts and cattle used in committing such offence, shall be liable, by order of the convicting Magistrate, to confiscation.

Timber, forest-produce, tools, &c., when liable to confiscation.

Such confiscation may be in addition to any other punishment prescribed for such offence.

55. When the trial of any forest-offence is concluded, any timber or forest-produce in respect of which such offence has been committed shall, if it is the property of Government, or has been confiscated, be taken possession of by a Forest-officer specially empowered in this behalf; and in any other case may be disposed of in such manner as the Court may order.

Disposal, on conclusion of trial for forest-offence, of produce in respect of which it was committed.

56. When the offender is not known or cannot be found, the Magistrate enquiring into the offence, if he finds that an offence has been committed, may, on application in this behalf, order the property in respect of which the offence has been committed to be confiscated and taken possession of by a Forest-officer specially empowered in this behalf, or to be made over to such Forest-officer or other person as the Magistrate considers entitled to the same:

Procedure when offender not known or cannot be found.

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

The Magistrate shall either cause a notice of any application under this section to be served upon any person whom he has reason to believe is interested in the property seized, or shall publish such notice in any way which he thinks fit.

57. The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section fifty-two and subject to speedy and natural decay, and may deal with the proceeds as he might have dealt with such property if it had not been sold.

Procedure as to perishable property seized under section 52.

58. Any person claiming to be interested in property seized under section fifty-two may, within one month from the date of any order passed under section fifty-four, section fifty-five or section fifty-six, present an appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

Appeal from orders under sections 54, 55 and 56.

59. When an order for the confiscation of any property has been passed under section fifty-four or fifty-six, and the period limited by section fifty-eight for presenting an appeal

Property when to vest in Government.

from such order has elapsed, and no such appeal has been presented, or when, on such an appeal being presented, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or portion, as the case may be, shall vest in the Government free from all incumbrances.

Saving of power to release property seized.

60. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Chief Commissioner from directing at any time the immediate release of any property seized under section fifty-two and the withdrawal of any charge made in respect of such property.

Punishment for wrongful seizure.

61. Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Any fine so imposed, or any portion thereof, shall, if the convicting Magistrate so direct, be given as compensation to the person aggrieved by such seizure.

Penalty for counterfeiting or defacing marks in trees and timber and for altering boundary-marks.

62. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code—

(*a*) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person, or

(*b*) unlawfully affixes to any timber or standing tree a mark used by Forest-officers, or

(*c*) alters, defaces or obliterates any such mark placed on any timber or standing tree by or under the authority of a Forest-officer, or

(*d*) alters, moves, destroys or defaces any boundary-mark of any forest or waste-land to which any provisions of this Act apply,

shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Power to arrest without warrant.

63. Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person reasonably suspected of having been concerned in any forest-offence punishable with imprisonment for one month or upwards, if such person refuses to give his name and residence, or gives a name or residence which there is reason to believe to be false, or if there is reason to believe that he will abscond.

Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case.

Power to prevent commission of offence.

64. Every Forest-officer and Police-Officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

Operation of other laws not barred.

65. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes a forest offence or from being liable under such other law to any higher punishment or penalty than that provided by this Act or the rules made hereunder:

Provided that no person shall be punished twice for the same offence.

Power to compound offences.

66. Any Forest-officer specially empowered in this behalf may accept from any person reasonably suspected of having committed any forest-offence other than an offence under section sixty-one or section sixty-two a sum of money by way of compensation for the offence which may have been committed; and where any property has been seized as liable to confiscation, may release the same on payment of the value thereof as estimated by such officer.

On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the accused person, if in custody, shall be discharged, the property seized shall be released, and no further proceedings shall be taken against such person or property.

Presumption that timber or forest-produce belongs to Government.

67. When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any timber or forest-produce is the property of the Government, such timber or produce shall be presumed to be the property of the Government until the contrary is proved.

CHAPTER IX.

CATTLE-TRESPASS.

Cattle-trespass Act, 1871, to apply.

68. Cattle trespassing in a reserved forest or in a village-forest shall be deemed to be cattle doing damage to a public plantation within the meaning of the eleventh section of the Cattle-trespass Act, 1871, and may be seized and impounded as such by any Forest-officer or Police-officer.

Power to alter fines fixed by that Act.

69. The Chief Commissioner may, by notification in the official Gazette, direct that, in lieu of the fines fixed by the twelfth section of the Act last aforesaid, there shall be levied for each head of cattle impounded under section sixty-eight of this Act, such fines as he thinks fit, but not exceeding the following (that is to say):—

	Rs.	A.
For each elephant	10	0
For each buffalo	2	0
For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer ...	1	0
For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid ...	0	8

CHAPTER X.

OF FOREST-OFFICERS.

Chief Commissioner may invest Forest-officers with certain powers.

70. The Chief Commissioner may invest any Forest-officer by name, or as holding an office, with the following powers (that is to say):—

(*a*) the powers of a Demarcation-officer under the Burma Boundaries Act, 1880;

(*b*) the powers of a Civil Court to compel the attendance of witnesses and the production of documents;

(*c*) power to issue search-warrants under the Code of Criminal Procedure;

(*d*) power to hold enquiries into forest-offences, and in the course of such enquiries to receive and record evidence;

(*e*) power to notify seasons and manner in which fire may be kindled, kept or carried in a reserved forest;

(*f*) power to grant any permission referred to in section twenty-seven, thirty-two, thirty-six or thirty-eight;

(*g*) power to notify stations for the reception of drift timber;

(*h*) power to give public notice of timber collected under section forty-six;

(*i*) power to take possession of property under this Act;

(*j*) power to direct the release of property or withdrawal of charges;

(*k*) power to accept compensation for forest-offences;

and may withdraw any powers so conferred.

Any evidence recorded under clause (*d*) of this section shall be admissible in any subsequent trial before a Magistrate of the alleged offender: Provided that it has been taken in the presence of the accused person, and recorded in the manner provided by section 333, section 334 or section 335 of the Code of Criminal Procedure.

Forest-officers deemed public servants.

71. All Forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

Indemnity for acts done in good faith.

72. No suit or criminal prosecution shall lie against any public servant for anything done or omitted by him in good faith under this Act.

Forest-officers not to trade.

73. Except with the permission in writing of the Chief Commissioner, no Forest-officer shall, as principal or agent, trade in timber or forest-produce, or be or become interested in any lease or mortgage of any forest or in any contract for working any forest, whether in British or foreign territory.

CHAPTER XI.

MISCELLANEOUS.

Additional powers to make rules.

74. The Chief Commissioner may make rules consistent with this Act—

(*a*) to declare by what Forest-officer or class of Forest-officers the powers or duties conferred or imposed by or under this Act on a Forest-officer shall be exercised or performed;

(*b*) to regulate the procedure of Forest-Settlement-officers;

(*c*) to regulate the rewards to be paid to officers and informers from the proceeds of fines and confiscations under this Act or from the Public Treasury; and

(*d*) generally to carry out the provisions of this Act.

Rules when to have force of law.

75. All rules made by the Chief Commissioner under this Act shall be published in the official Gazette, and shall thereupon have the force of law.

Powers of Chief Commissioner exercisable from time to time.

All powers conferred by this Act on the Chief Commissioner may be exercised from time to time as occasion requires.

Persons bound to assist Forest-officer and Police-officer.

76. Every person who exercises any right in a reserved forest or a village-forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle or to practice toungya cultivation in, such forest, and

every person who is employed by any such person in such forest, and

every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information he may possess respecting the occurrence of a fire in or near such forest, or, the commission of, or intention to commit, any forest-offence, and shall assist any Forest-officer or Police-officer demanding his aid—

(*a*) in extinguishing any fire occurring in such forest;

(*b*) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest;

(*c*) in preventing the commission in such forest of any forest-offence; and

(*d*) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

Recovery of money due to Government.

77. All money, other than fines, payable to the Government under this Act, or under any rule made hereunder, or on account of the price of any timber or forest-produce, or of expenses incurred in the execution of this Act in respect of such timber or forest-produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

Lien on forest-produce for such money.

78. When any such money is payable for, or in respect of, any forest-produce, the amount thereof shall be deemed to be a first charge on such produce; and such produce may be taken possession of by a Forest-officer specially empowered in this behalf, and may be retained by him until such amount has been paid.

Power to sell such produce.

If such amount is not paid when due, such Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

The surplus (if any), if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Government.

Government and its officers not liable for loss or damage in respect of certain timber.

79. The Government shall not be responsible for any loss or damage which may occur in respect of any timber while at a station established under a rule

made under section forty-three, or while detained elsewhere for the purposes of this Act, or in respect of any timber collected under section forty-six; and no Forest-officer shall be responsible for any such loss or damage unless he causes the same negligently, maliciously or fraudulently.

Land required under this Act to be deemed to be needed for a public purpose under Land Acquisition Act.

80. Whenever it appears to the Chief Commissioner that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act, 1870, section four.

SCHEDULE.

(See section 2.)

ENACTMENTS REPEALED.

Number and year of Act or Regulation.	Title.	Extent of repeal.
Act VII of 1865...	An Act to give effect to rules for the management and preservation of Government forests.	So much as has not been repealed.
Act VII of 1869...	An Act to give validity to certain rules relating to forests in British Burma.	The whole.
Act XIII of 1873	An Act to amend the law relating to timber floated down the rivers of British Burma.	So much as has not been repealed.
Regulation IX of 1874.	The Arakan Hill District Laws Regulation, 1874.	So far as it relates to Acts VII of 1865 and VII of 1869.
	The Rules for the better management and preservation of the Government Forests in British Burma, dated the second day of August, 1865.	The whole.

R. J. CROSTHWAITE,

Offg. Secretary to the Government of India.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 7th September, 1881, and is hereby promulgated for general information :—

ACT No. XX OF 1881.

THE SINDH INCUMBERED ESTATES ACT, 1881.

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An Act to amend the law providing for the relief of Jágírdárs and Zamíndárs in Sindh.

WHEREAS it is expedient to amend the law providing for the relief of Jágírdárs and Zamíndárs in Sindh ; It is hereby enacted as follows :— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Sindh Incumbered Estates Act, 1881"; and it shall come into force on the passing thereof. Short title. Commencement.

2. Act No. XIV of 1876 (*to relieve from Incumbrances the estates of Jágírdárs and Zamíndárs in Sindh*) is repealed ; but all applications, appointments and rules made, all notices published and all other things duly done under the said Act shall be deemed to have been respectively made, published and done under this Act. Repeal of Act No. XIV of 1876.

3. In this Act— Interpretation-clause.

"Jágír land" includes also a share held hereditarily of the revenues of a Government village, but does not include *siri* or *mámul* or garden grants : "Jágír land":

"Jágírdár" means a person who, or whose ancestor, was found in possession of jágír land in Sindh on the seventeenth day of February, 1843, and to whom the said land, or a portion of the same, or other land in lieu thereof, has been continued by the British Government, and to whom, or to whose ancestor, a sanad has been, or hereafter may be, granted confirming such continuance : "Jágírdár":

"Zamíndár" means a person holding lands in Sindh on the aggregate of which he or his ancestor has been assessed by the Government, on account of land-revenue for any one of the five revenue years next before the fourteenth day of September, 1876, a sum not less than three hundred rupees : "Zamíndár":

"Commissioner" means the Commissioner in Sindh. "Commissioner."

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

4. At any time within six months after the passing of this Act, any jágírdár or zamíndár, Application for the benefit of this Act.

or any person who would be sole heir or one of the heirs to such jágírdár or zamíndár if he then died intestate,

may apply, in writing, to the Commissioner, stating that such jágírdár or zamíndár is subject to debts or liabilities, other than debts due, or liabilities incurred, to Government, or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case.

When any jágírdár, zamíndár or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

5. When any such application is made by or on behalf of a jágírdár, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities, and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same. Order to inquire.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the Governor of Bombay in Council in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

6. When an inquiry has been directed under section five, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immoveable, to meet the same, as the Commissioner, or the said officer subject to his control, may require. Verified statement to be submitted.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code. False averments in statement.

7. The officer so appointed, after making inquiry, shall submit a report of the proceedings to the Commissioner. Report of inquiry and proceedings thereon.

On receipt of such report, the Commissioner may (*a*) direct a further inquiry ; or (*b*) dismiss the application ; or (*c*), by order published in the *Sindh Official Gazette*, appoint an officer (hereinafter called the manager) to manage the immoveable property of the debtor, and to arrange for the liquidation of his debts in manner hereinafter provided.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

8. Such order (hereinafter called "the order of management") shall extend to all immoveable property of or to which the debtor is on the date of its "Order of management;" to what it extends.

publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject, or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided.

The management shall be deemed to commence from the date on which the order is published. Commencement of management.

9. On the publication of the order of management the following consequences shall ensue :— Effect of order of management.

First, all proceedings then pending in any civil Court in British India in respect to the debts and liabilities mentioned in section eight shall be stayed ; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended ; Stay of pending proceedings, &c.

Secondly, so long as the management continues, no fresh proceedings, processes, executions or attachments shall be instituted in or issued by any civil Court in British India in respect of such debts and liabilities ; Bar of fresh proceedings.

Thirdly, so long as the management continues, the debtor shall be incompetent— The debtor incompetent—

(*a*) to enter into any contract involving him in pecuniary liability, or to contract debts,

(*b*) to mortgage, charge, lease or alienate the property under management or any part thereof, or to encumber or alienate property under management.

(*c*) to grant valid receipts for the rents and profits arising or accruing therefrom : to grant receipts for rent thereof.

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties ;

Fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease or alienate such property or any part thereof.

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management, Manager to have powers of owner and to receive rents and profits,

and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by a jágírdár or zamíndár, as the case may be, all the powers possessed by a Collector under the law for the time being in force for the recovery of land-revenue due to Government ; to have powers of a Collector for their recovery.

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years, to take effect in possession.

11. From the sums received or recovered under section ten, the manager shall pay— Manager to pay therefrom—

First, the costs of the management, including the costs of necessary repairs ; costs of management and repairs,

Secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management ; Government revenue, &c.,

Thirdly, the rent (if any) due to the jágírdár or other superior holder in respect of the said property ; rent due to superior holder,

Fourthly, such periodical allowances as the Commissioner may from time to time fix for the maintenance of the debtor and his family ; allowance for maintenance of debtor,

Fifthly, the cost of such improvements of the said property as he thinks necessary, and are approved by the Commissioner. cost of improvements, &c.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section eight other than those so due or incurred to Government, and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act. Residue how disposed of.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. On the publication of the order of management, the manager shall publish in the *Sindh Official Gazette* a notice in English and Sindhí, calling upon all persons having claims against the debtor, or the property under management, to notify the same in writing to such manager within six months from the date of the publication. Notice to claimants against debtor.

He shall also cause copies of such notice to be exhibited at the mukhtiárkárs' kachahrís in the district in which the said property lies, and at such other places as he thinks fit. Copies of notice to be exhibited.

13. Every such claimant shall, along with his claim, present full particulars thereof. Claim to contain full particulars.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim. Documents to be given up.

If the document be an entry in any book, the claimant shall produce the book to the manager, together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant. Entries in books.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Exclusion of documents not produced.

14. Every such claim (other than claims of the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section nineteen, clause (*d*), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged:

Claim not duly notified to be barred.

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section twelve, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

Provision for admission of claims within further period of six months.

15. The manager shall inquire into the history and merits of every claim received under sections twelve and fourteen, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

Determination of debts and liabilities.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

Power to rank debts and to fix interest.

17. When the total amount of the debts and liabilities (including those due and incurred to Government) has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) showing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Scheme for liquidation.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section eleven, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act; and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

Provisions of scheme.

Proceedings of Commissioner on submission of scheme.

18. The Commissioner may

(*a*) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(*b*) sanction any liquidation-scheme or any revised liquidation-scheme submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

19. At any time before he has sanctioned a liquidation-scheme under section eighteen, the Commissioner may, by an order published in the *Sindh Official Gazette*, direct that on a date fixed by such order the management shall be relinquished.

Power to relinquish management.

On the date so fixed—

(*a*) the management shall terminate;

(*b*) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section ten;

(*c*) any residue of the rents and profits of the said property retained under the last clause of section eleven shall be paid to him; and

(*d*) the proceedings, processes, executions and attachments stayed and suspended under section nine, and the debts and liabilities barred by section fourteen, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the local Government may from time to time by rule direct; and thereupon—

Effects of sanctioning scheme.

1*st*, all proceedings, processes, executions and attachments stayed or suspended under section nine shall be for ever barred, and

2*nd*, every debt or liability due or owing to any person which was proveable before the manager shall be extinguished; and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue year.

Power to remove mortgagee in possession.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV of this Act.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager, with the sanction of the Commissioner, may inquire into the sufficiency of the consideration for which the lease was given; and if such consideration appear to him insufficient, may by order, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and in default of such payment the lease shall be cancelled.

Power to inquire into consideration given for leases.

23. Subject to the rules made under section thirty-one, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

Power to lease.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme—

Power to raise money by mortgage or sale.

(*a*) by demising by way of mortgage the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(*b*) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(*c*) by borrowing money from Government at such rate of interest as appears reasonable to the local Government.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

Manager's receipt to be a discharge.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (*c*) of section twenty-four, together with the interest (if any) due thereon, have been paid and discharged, the manager shall publish in the *Sindh Official Gazette* a notice fixing a date for the termination of the management.

Termination of management.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section twenty-four, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections ten, twenty-three and twenty-four.

Restoration of owner.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided—

Death of debtor during management.

1*st*, the management shall continue and proceed in all respects as if such debtor were still living;

2*ndly*, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (*b*) and (*c*) of section nine; and

3*rdly*, no civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

28. When a jágírdár or zamíndár has been restored under section twenty-six to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such jagírdár or zamíndár shall be valid as to any time beyond his natural life.

Mortgages, &c., made by restored jágírdár valid only for his life.

CHAPTER VI.

OF APPEAL AND REVISION.

29. An appeal against any decision or order under sections fourteen, fifteen, sixteen and twenty-two, and imposing a fine or imprisonment in exercise of the powers conferred by section thirty-five, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order.

Appeal.

There shall be no appeal against the decision of the Commissioner on such appeal.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

Power to call for proceedings and pass order thereon.

CHAPTER VII.

MISCELLANEOUS.

31. The Commissioner, with the previous sanction of the Governor of Bombay in Council, may, from time to time, make rules consistent with this Act—

Power to make rules.

(*a*) to regulate the security to be required from subordinate officers under this Act;

(*b*) to regulate the procedure in all cases under this Act;

(*c*) for the guidance of officers enquiring into and determining on claims under Chapter IV of this Act; and in particular as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determin-

ation, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

(*d*) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities; and

(*e*) generally to carry out the provisions of this Act.

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

Power to appoint new manager.

32. Whenever the Commissioner thinks fit, he may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

Managers to be public servants.

33. Every manager appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Investigation to be deemed a judicial proceeding.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

Power to summon witnesses and compel production of documents.

35. For the purposes of this Act, the manager may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible, in the same manner, as is provided in the case of a civil Court by the Code of Civil Procedure.

Bar of suits.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

Saving of jurisdiction of Courts in Sindh in respect of certain suits.

37. Nothing in this Act precludes the Courts in Sindh having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 7th September, 1881, and is hereby promulgated for general information:—

ACT No. XXI OF 1881.

THE BROACH AND KAIRA INCUMBERED ESTATES ACT, 1881.

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An Act to amend the law providing for the relief of Thákurs in the Districts of Broach and Kaira.

WHEREAS it is expedient to amend the law providing for the relief of Thákurs in the Districts of Broach and Kaira; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Broach and Kaira Incumbered Estates Act, 1881":

Short title.

and it shall come into force on the passing thereof,

Commencement.

2. Act No. XIV of 1877 (*to relieve from Incumbrances the estates of Thákurs in Broach and Kaira*), except the last three sections, is repealed;

Partial repeal of Act No. XIV of 1877.

But all applications, appointments and rules made, all notices published and all other things duly done under the said Act or under Act No. XV of 1871 (*to relieve from Incumbrances the estates of Thákurs in Broach*) shall be deemed to have been respectively made, published and done under this Act.

In section 40 of the said Act No. XIV of 1877, for the words "the said Taluqdárí Settlement Officer," the words "the Taluqdárí Settlement Officer mentioned in the Broach and Kaira Incumbered Estates Act, 1881, section seven," shall be substituted.

3. In this Act—

Interpretation-clause.

"Thákur" means also taluqdár, jágírdár and kasbátí, and such other classes of holders of estates as the local Government may, with the previous sanction of the Governor General in Council, declare to be Thákurs for the purposes of this Act:

"Thákur":

"Heir" means the person for the time being entitled as heir to a Thákur:

"Heir":

"Commissioner" means the Revenue Commissioner of the Northern Division of the Presidency of Bombay.

"Commissioner."

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

4. At any time within six months after the passing of this Act, any Thákur,

Application for benefit of Act.

or any person who would be sole heir or one of the heirs to such Thákur if he then died intestate, may apply, in writing, to the Commissioner stating that such Thákur is subject to debts or liabilities, other than debts due, or liabilities incurred, to Government, or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case.

When any Thákur or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

5. When any such application is made by or on behalf of a Thákur, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same.

Order to inquire.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the Governor of Bombay in Council in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

6. When an inquiry has been directed under section five, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immoveable, to meet the same, as the Commissioner, or the said officer subject to his control, may require.

Verified statement to be submitted.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code.

False averments in statement.

7. The officer so appointed, after making inquiry, shall submit a report of his proceedings to the Commissioner.

Report of inquiry and proceedings thereon.

On receipt of such report, the Commissioner may—

(*a*) direct a further inquiry, or

(*b*) dismiss the application, or

(*c*) by order published in the *Bombay Government Gazette*, direct that the immoveable property of the debtor shall be managed, and that his debts shall be liquidated, in the manner hereinafter provided, by a manager.

The Taluqdárí Settlement-officer for the time being shall, unless the local Government in any case otherwise directs, be such manager.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

8. Such order (hereinafter called "the order of management") shall extend to all immoveable property of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject, or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided.

"Order of management;" to what it extends.

The management shall be deemed to commence from the date on which the order is published.

Commencement of management.

9. On the publication of the order of management the following consequences shall ensue:—

Effect of order of management.

First, all proceedings then pending in any civil Court in British India in respect to the debts and liabilities mentioned in section eight shall be stayed; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended;

Stay of pending proceedings, &c.

Secondly, so long as the management continues, no fresh proceedings, processes, executions or attachments shall be instituted in or issued by any civil Court in British India in respect of such debts and liabilities;

Bar of fresh proceedings.

Thirdly, so long as the management continues, the debtor shall be incompetent—

The debtor incompetent—

(*a*) to enter into any contract involving him in pecuniary liability, or

to contract debts,

(*b*) to mortgage, charge, lease or alienate the property under management or any part thereof, or

to incumber or alienate property,

(*c*) to grant valid receipts for the rents and profits arising or accruing therefrom:

to grant receipts for rent.

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties;

Fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease or alienate such property or any part thereof.

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management;

Manager to have powers of owner and to receive rents and profits;

and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by a Thákur, all the powers possessed by a Collector, under the law for the time being in force, for securing and recovering land-revenue due to Government:

to have powers of Collector for their recovery.

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years, to take effect in possession.

11. From the sums received or recovered under section ten, the manager shall pay—

Manager to pay therefrom—

First, the costs of the management, including the costs of necessary repairs;

costs of management and repairs,

Secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management;

Government revenue, &c.,

Thirdly, the rent (if any) due to any superior holder in respect of the said property;

rent due to superior holder,

Fourthly, such periodical allowance as the Commissioner may from time to time fix for the maintenance and other necessary expenses of the debtor and of such members of his family as the Commissioner directs;

allowance for maintenance and expenses of debtor and family,

Fifthly, the cost of such improvements of the said property as he thinks necessary, and as are approved by the Commissioner.

cost of improvements, &c.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section eight other than those so due or incurred to Government, and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act.

Residue how disposed of.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. On the publication of the order of management, the manager shall publish in the *Bombay Government Gazette* a notice in English and Gujrátí calling upon all persons having claims against the debtor or the property under management to notify the same in writing to such manager within six months from the date of the publication.

Notice to claimants against debtor.

He shall also cause copies of such notice to be exhibited at the Mámlatdárs' kachahrís in the district in which the said property lies, and at such other places as he thinks fit.

Copies of notice to be exhibited.

13. Every such claimant shall, along with his claim, present full particulars thereof.

Claim to contain full particulars.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.

Documents to be given up.

If the document be an entry in any book, the claimant shall produce the book to the manager together with a copy of the entry on which he relies.

Entries in books.

The manager shall mark the book for the purpose of identification, and after examining and comparing the copy with the original, shall return the book to the claimant.

Power to exclude documents not produced with claim.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Claim not duly notified to be barred.

14. Every such claim (other than claims of the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section nineteen, clause (*d*), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged:

Admission of claims within further period of six months.

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section twelve, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

Determination of debts and liabilities.

15. The manager shall inquire into the history and merits of every claim received under sections twelve and fourteen, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

Power to rank debts and to fix interest.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

Scheme for liquidation.

17. When the total amount of the debts and liabilities (including those due and incurred to Government) has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) shewing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Provisions of scheme.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section eleven, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act, and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

Proceedings of Commissioner on submission of scheme.

18. The Commissioner may—

(*a*) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(*b*) sanction any liquidation-scheme, or any revised liquidation-scheme, submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

Power to relinquish management.

19. At any time before he has sanctioned a liquidation-scheme under section eighteen, the Commissioner may, by an order published in the *Bombay Government Gazette*, direct that on a date fixed by such order the management shall be relinquished.

On the date so fixed—

(*a*) the management shall terminate;

(*b*) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section ten;

(*c*) any residue of the rents and profits of the said property retained under the last clause of section eleven shall be paid to him; and

(*d*) the proceedings, processes, executions and attachments stayed and suspended under section nine, and the debts and liabilities barred by section fourteen, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

Effects of sanctioning scheme.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the local Government may from time to time by rule direct; and thereupon—

1*st*, all proceedings, processes, executions and attachments stayed or suspended under section nine shall be for ever barred; and

2*nd*, every debt or liability due or owing to any person which was proveable before the manager shall be extinguished, and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability.

Power to remove mortgagee in possession.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue year.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV of this Act.

Power to inquire into consideration given for leases.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager may inquire into the sufficiency of the consideration for which the lease was given; and if such consideration appear to him insufficient, may by order, with the consent of the Commissioner, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and in default of such payment, the lease shall be cancelled.

Power to lease.

23. Subject to the rules made under section thirty-one, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

Power to raise money by mortgage or sale.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme—

(*a*) by mortgaging the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(*b*) by charging the whole or any part of such property; or

(*c*) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(*d*) by borrowing money from Government at such rate of interest as appears reasonable to the local Government.

Manager's receipt a discharge.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

Termination of management.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (*d*) of section twenty-four, together with the interest (if any) due thereon, have been paid and discharged as therein provided, or in such other manner as the Commissioner thinks fit, the manager shall publish in the *Bombay Government Gazette* a notice fixing a date for the termination of the management.

Restoration of owner.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section twenty-four, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections ten, twenty-three and twenty-four.

Death of debtor during management.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided—

1*st*, the management shall continue and proceed in all respects as if such debtor were still living;

2*ndly*, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (*b*) and (*c*) of section nine; and

3*rdly*, no civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management, for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

Mortgages, &c., made by restored Thákur valid only for his life.

28. When a Thákur has been restored under section twenty-six to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such Thákur, shall be valid as to any time beyond his natural life.

CHAPTER VI.

OF APPEAL AND REVISION.

Appeal.

29. An appeal against any decision or order under sections fourteen, fifteen, sixteen and twenty-two, or imposing a fine or imprisonment in exercise of the powers conferred by section thirty-five, shall lie to the Commissioner, if preferred within six weeks from the date of such decison or order.

There shall be no appeal against the decision of the Commissioner on such appeal.

Power to call for proceedings and pass order thereon.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

CHAPTER VII.

MISCELLANEOUS.

Power to make rules.

31. The local Government may, from time to time, make rules consistent with this Act—

(*a*) to regulate the security to be required from subordinate officers under this Act;

(*b*) to regulate the procedure in all cases under this Act;

(*c*) for the guidance of officers enquiring into and determining on claims under Chapter IV of this Act; and in particular as to the allowance of interest (if any) on each of the principal debts and

liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

(*d*) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities; and

(*e*) generally to carry out the provisions of this Act.

Such rules shall be published in the *Bombay Government Gazette*, and when so published shall have the force of law.

Power to appoint new manager.

32. The local Government may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

Managers and their agents to be public servants.

33. Every manager appointed under this Act and every agent of such manager shall be deemed a public servant within the meaning of the Indian Penal Code.

Investigation, a judicial proceeding.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

Power to summon witnesses and compel production of documents.

35. For the purposes of this Act, the manager and any officer making an inquiry under section five may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible, in the same manner, as is provided in the case of a civil Court by the Code of Civil Procedure.

Bar of suits.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

Saving of jurisdiction of Courts in Broach and Kaira in respect of certain suits.

37. Nothing in this Act precludes the Courts in Broach and Kaira having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

Exemption of certain Thákurs from certain provisions of Act.

38. Nothing in section nine shall be deemed to render any of the following Thákurs, namely, the Thákur of Ahmod, the Thákur of Sarod, the Thákur of Kerwára, the Thákur of Dehej, and the Thákur of Janiádra incompetent to enter into contracts involving him in pecuniary liability, nor shall anything in section twenty-eight apply to any of the said Thákurs:

Provided that, if any such Thákur has, since the scheme for the settlement of his debts and liabilities was approved under section 11 of the said Act No. XV of 1871, entered into any contract involving him in pecuniary liability exceeding the average annual income derived during the previous five years from his immoveable property after deducting therefrom the land-tax and other dues of Government, the local Government may, by notification in the *Bombay Government Gazette*, declare that the exemption made by the former part of this section shall cease in his case, and thereupon such exemption shall cease accordingly.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY SEPTEMBER 24, 1881.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

[Third publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 7th September, 1881, and is hereby promulgated for general information:—

ACT No. XX OF 1881.

THE SINDH INCUMBERED ESTATES ACT, 1881.

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An Act to amend the law providing for the relief of Jágírdárs and Zamíndárs in Sindh.

WHEREAS it is expedient to amend the law providing for the relief of Jágírdárs and Zamíndárs in Sindh ; It is hereby enacted as follows :— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Sindh Incumbered Estates Act, 1881"; and it shall come into force on the passing thereof. Short title. Commencement.

2. Act No. XIV of 1876 (*to relieve from Incumbrances the estates of Jágírdárs and Zamíndárs in Sindh*) is repealed ; but all applications, appointments and rules made, all notices published and all other things duly done under the said Act shall be deemed to have been respectively made, published and done under this Act. Repeal of Act No. XIV of 1876.

3. In this Act— Interpretation-clause.

"Jágír land" includes also a share held hereditarily of the revenues of a Government village, but does not include *siri* or *mámul* or garden grants : "Jágír land":

"Jágírdár" means a person who, or whose ancestor, was found in possession of jágír land in Sindh on the seventeenth day of February, 1843, and to whom the said land, or a portion of the same, or other land in lieu thereof, has been continued by the British Government, and to whom, or to whose ancestor, a sanad has been, or hereafter may be, granted confirming such continuance : "Jágírdár":

"Zamíndár" means a person holding lands in Sindh on the aggregate of which he or his ancestor has been assessed by the Government, on account of land-revenue for any one of the five revenue years next before the fourteenth day of September, 1876, a sum not less than three hundred rupees : "Zamíndár":

"Commissioner" means the Commissioner in Sindh. "Commissioner."

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

4. At any time within six months after the passing of this Act, any jágírdár or zamíndár, Application for the benefit of this Act.

or any person who would be sole heir or one of the heirs to such jágírdár or zamíndár if he then died intestate,

may apply, in writing, to the Commissioner, stating that such jágírdár or zamíndár is subject to debts or liabilities, other than debts due, or liabilities incurred, to Government, or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case.

When any jágírdár, zamíndár or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

5. When any such application is made by or on behalf of a jágírdár, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities, and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same. Order to inquire.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the Governor of Bombay in Council in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

6. When an inquiry has been directed under section five, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immoveable, to meet the same, as the Commissioner, or the said officer subject to his control, may require. Verified statement to be submitted.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code. False averments in statement.

7. The officer so appointed, after making inquiry, shall submit a report of the proceedings to the Commissioner. Report of inquiry and proceedings thereon.

On receipt of such report, the Commissioner may (*a*) direct a further inquiry ; or (*b*) dismiss the application ; or (*c*), by order published in the *Sindh Official Gazette*, appoint an officer (hereinafter called the manager) to manage the immoveable property of the debtor, and to arrange for the liquidation of his debts in manner hereinafter provided.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

8. Such order (hereinafter called "the order of management") shall extend to all immoveable property of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject, or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided. "Order of management;" to what it extends.

The management shall be deemed to commence from the date on which the order is published. Commencement of management.

9. On the publication of the order of management the following consequences shall ensue :— Effect of order of management.

First, all proceedings then pending in any civil Court in British India in respect to the debts and liabilities mentioned in section eight shall be stayed ; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended ; Stay of pending proceedings, &c.

Secondly, so long as the management continues, no fresh proceedings, processes, executions or attachments shall be instituted in or issued by any civil Court in British India in respect of such debts and liabilities ; Bar of fresh proceedings.

Thirdly, so long as the management continues, the debtor shall be incompetent— The debtor incompetent—

(*a*) to enter into any contract involving him in pecuniary liability, or to contract debts,

(*b*) to mortgage, charge, lease or alienate the property under management or any part thereof, or to encumber or alienate property under management,

(*c*) to grant valid receipts for the rents and profits arising or accruing therefrom : to grant receipts for rent thereof.

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties ;

Fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease or alienate such property or any part thereof.

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management, Manager to have powers of owner and to receive rents and profits,

and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by a jágírdár or zamíndár, as the case may be, all the powers to have powers of a Collector for their recovery.

possessed by a Collector under the law for the time being in force for the recovery of land-revenue due to Government :

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years, to take effect in possession.

11. From the sums received or recovered under section ten, the manager shall pay— Manager to pay therefrom—

First, the costs of the management, including the costs of necessary repairs ; costs of management and repairs,

Secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management ; Government revenue, &c.,

Thirdly, the rent (if any) due to the jágírdár or other superior holder in respect of the said property ; rent due to superior holder,

Fourthly, such periodical allowances as the Commissioner may from time to time fix for the maintenance of the debtor and his family ; allowance for maintenance of debtor,

Fifthly, the cost of such improvements of the said property as he thinks necessary, and are approved by the Commissioner. cost of improvements, &c.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section eight other than those so due or incurred to Government, and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act. Residue how disposed of.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. On the publication of the order of management, the manager shall publish in the *Sindh Official Gazette* a notice in English and Sindhí, calling upon all persons having claims against the debtor, or the property under management, to notify the same in writing to such manager within six months from the date of the publication. Notice to claimants against debtor.

He shall also cause copies of such notice to be exhibited at the mukhtiárkárs' kachahrís in the district in which the said property lies, and at such other places as he thinks fit. Copies of notice to be exhibited.

13. Every such claimant shall, along with his claim, present full particulars thereof. Claim to contain full particulars.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim. Documents to be given up.

If the document be an entry in any book, the claimant shall produce the book to the manager, together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant. Entries in books.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Exclusion of documents not produced.

14. Every such claim (other than claims of the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section nineteen, clause (*d*), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged:

Claim not duly notified to be barred.

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section twelve, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

Provision for admission of claims within further period of six months.

15. The manager shall inquire into the history and merits of every claim received under sections twelve and fourteen, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

Determination of debts and liabilities.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

Power to rank debts and to fix interest.

17. When the total amount of the debts and liabilities (including those due and incurred to Government) has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) showing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Scheme for liquidation.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section eleven, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act; and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

Provisions of scheme.

Proceedings of Commissioner on submission of scheme.

18. The Commissioner may

(*a*) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(*b*) sanction any liquidation-scheme or any revised liquidation-scheme submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

19. At any time before he has sanctioned a liquidation-scheme under section eighteen, the Commissioner may, by an order published in the *Sindh Official Gazette*, direct that on a date fixed by such order the management shall be relinquished.

Power to relinquish management.

On the date so fixed—

(*a*) the management shall terminate;

(*b*) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section ten;

(*c*) any residue of the rents and profits of the said property retained under the last clause of section eleven shall be paid to him; and

(*d*) the proceedings, processes, executions and attachments stayed and suspended under section nine, and the debts and liabilities barred by section fourteen, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the local Government may from time to time by rule direct; and thereupon—

Effects of sanctioning scheme.

1*st*, all proceedings, processes, executions and attachments stayed or suspended under section nine shall be for ever barred, and

2*nd*, every debt or liability due or owing to any person which was proveable before the manager shall be extinguished; and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue year.

Power to remove mortgagee in possession.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV of this Act.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager, with the sanction of the Commissioner, may inquire into the sufficiency of the consideration for which the lease was given; and if such consideration appear to him insufficient, may by order, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and in default of such payment the lease shall be cancelled.

Power to inquire into consideration given for leases.

23. Subject to the rules made under section thirty-one, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

Power to lease.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme—

Power to raise money by mortgage or sale.

(*a*) by demising by way of mortgage the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(*b*) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(*c*) by borrowing money from Government at such rate of interest as appears reasonable to the local Government.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

Manager's receipt to be a discharge.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (*c*) of section twenty-four, together with the interest (if any) due thereon, have been paid and discharged, the manager shall publish in the *Sindh Official Gazette* a notice fixing a date for the termination of the management.

Termination of management.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section twenty-four, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections ten, twenty-three and twenty-four.

Restoration of owner.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided—

Death of debtor during management.

1*st*, the management shall continue and proceed in all respects as if such debtor were still living;

2*ndly*, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (*b*) and (*c*) of section nine; and

3*rdly*, no civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

28. When a jágírdár or zamíndár has been restored under section twenty-six to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such jagírdár or zamíndár shall be valid as to any time beyond his natural life.

Mortgages, &c., made by restored jágírdár valid only for his life.

CHAPTER VI.

OF APPEAL AND REVISION.

29. An appeal against any decision or order under sections fourteen, fifteen, sixteen and twenty-two, and imposing a fine or imprisonment in exercise of the powers conferred by section thirty-five, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order.

Appeal.

There shall be no appeal against the decision of the Commissioner on such appeal.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

Power to call for proceedings and pass order thereon.

CHAPTER VII.

MISCELLANEOUS.

31. The Commissioner, with the previous sanction of the Governor of Bombay in Council, may, from time to time, make rules consistent with this Act—

Power to make rules.

(*a*) to regulate the security to be required from subordinate officers under this Act;

(*b*) to regulate the procedure in all cases under this Act;

(*c*) for the guidance of officers enquiring into and determining on claims under Chapter IV of this Act; and in particular as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determin-

ation, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

(*d*) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities; and

(*e*) generally to carry out the provisions of this Act.

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

Power to appoint new manager.

32. Whenever the Commissioner thinks fit, he may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

Managers to be public servants.

33. Every manager appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Investigation to be deemed a judicial proceeding.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

Power to summon witnesses and compel production of documents.

35. For the purposes of this Act, the manager may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible, in the same manner, as is provided in the case of a civil Court by the Code of Civil Procedure.

Bar of suits.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

Saving of jurisdiction of Courts in Sindh in respect of certain suits.

37. Nothing in this Act precludes the Courts in Sindh having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

[Third publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 7th September, 1881, and is hereby promulgated for general information:—

ACT No. XXI OF 1881.

THE BROACH AND KAIRA INCUMBERED ESTATES ACT, 1881.

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An Act to amend the law providing for the relief of Thákurs in the Districts of Broach and Kaira.

WHEREAS it is expedient to amend the law providing for the relief of Thákurs in the Districts of Broach and Kaira; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Broach and Kaira Incumbered Estates Act, 1881": Short title.

and it shall come into force on the passing thereof. Commencement.

2. Act No. XIV. of 1877 (*to relieve from Incumbrances the estates of Thákurs in Broach and Kaira*), except the last three sections, is repealed; Partial repeal of Act No. XIV of 1877.

But all applications, appointments and rules made, all notices published and all other things duly done under the said Act or under Act No. XV of 1871 (*to relieve from Incumbrances the estates of Thákurs in Broach*) shall be deemed to have been respectively made, published and done under this Act.

In section 40 of the said Act No. XIV of 1877, for the words "the said Taluqdárí Settlement Officer," the words "the Taluqdárí Settlement Officer mentioned in the Broach and Kaira Incumbered Estates Act, 1881, section seven," shall be substituted.

3. In this Act— Interpretation-clause.

"Thákur" means also taluqdár, jágírdár and kasbátí, and such other classes of holders of estates as the local Government may, with the previous sanction of the Governor General in Council, declare to be Thákurs for the purposes of this Act: "Thákur":

"Heir" means the person for the time being entitled as heir to a Thákur: "Heir";

"Commissioner" means the Revenue Commissioner of the Northern Division of the Presidency of Bombay. "Commissioner."

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

4. At any time within six months after the passing of this Act, any Thákur, Application for benefit of Act.

or any person who would be sole heir or one of the heirs to such Thákur if he then died intestate, may apply, in writing, to the Commissioner stating that such Thákur is subject to debts or liabilities, other than debts due, or liabilities incurred, to Government, or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case.

When any Thákur or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

5. When any such application is made by or on behalf of a Thákur, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same. Order to inquire.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the Governor of Bombay in Council in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

6. When an inquiry has been directed under section five, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immoveable, to meet the same, as the Commissioner, or the said officer subject to his control, may require. Verified statement to be submitted.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code. False averments in statement.

7. The officer so appointed, after making inquiry, shall submit a report of his proceedings to the Commissioner. Report of inquiry and proceedings thereon.

On receipt of such report, the Commissioner may—

(*a*) direct a further inquiry, or

(*b*) dismiss the application, or

(*c*) by order published in the *Bombay Government Gazette*, direct that the immoveable property of the debtor shall be managed, and that his debts shall be liquidated, in the manner hereinafter provided, by a manager.

The Taluqdárí Settlement-officer for the time being shall, unless the local Government in any case otherwise directs, be such manager.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

8. Such order (hereinafter called "the order of management") shall extend to all immoveable property of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject, or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided. "Order of management;" to what it extends.

The management shall be deemed to commence from the date on which the order is published. Commencement of management.

9. On the publication of the order of management the following consequences shall ensue:— Effect of order of management.

First, all proceedings then pending in any civil Court in British India in respect to the debts and liabilities mentioned in section eight shall be stayed; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended; Stay of pending proceedings, &c.

Secondly, so long as the management continues, no fresh proceedings, processes, executions or attachments shall be instituted in or issued by any civil Court in British India in respect of such debts and liabilities; Bar of fresh proceedings.

Thirdly, so long as the management continues, the debtor shall be incompetent— The debtor incompetent—

(*a*) to enter into any contract involving him in pecuniary liability, or to contract debts,

(*b*) to mortgage, charge, lease or alienate the property under management or any part thereof, or to incumber or alienate property,

(*c*) to grant valid receipts for the rents and profits arising or accruing therefrom: to grant receipts for rent.

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties;

Fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease or alienate such property or any part thereof.

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management, Manager to have powers of owner and to receive rents and profits;

and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by a Thákur, all the powers possessed by a Collector, under the law for the time being in force, for to have powers of Collector for their recovery.

securing and recovering land-revenue due to Government:

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years, to take effect in possession.

11. From the sums received or recovered under section ten, the manager shall pay— Manager to pay therefrom—

First, the costs of the management, including the costs of necessary repairs; costs of management and repairs,

Secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management; Government revenue, &c.,

Thirdly, the rent (if any) due to any superior holder in respect of the said property; rent due to superior holder,

Fourthly, such periodical allowance as the Commissioner may from time to time fix for the maintenance and other necessary expenses of the debtor and of such members of his family as the Commissioner directs; allowance for maintenance and expenses of debtor and family,

Fifthly, the cost of such improvements of the said property as he thinks necessary, and as are approved by the Commissioner. cost of improvements, &c.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section eight other than those so due or incurred to Government, and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act. Residue how disposed of.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. On the publication of the order of management, the manager shall publish in the *Bombay Government Gazette* a notice in English and Gujrátí calling upon all persons having claims against the debtor or the property under management to notify the same in writing to such manager within six months from the date of the publication. Notice to claimants against debtor.

He shall also cause copies of such notice to be exhibited at the Mámlatdárs' kachahrís in the district in which the said property lies, and at such other places as he thinks fit. Copies of notice to be exhibited.

13. Every such claimant shall, along with his claim, present full particulars thereof. Claim to contain full particulars.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim. Documents to be given up.

If the document be an entry in any book, the claimant shall produce the book to the manager together with a copy of the entry on which he relies. Entries in books.

The manager shall mark the book for the purpose of identification, and after examining and comparing the copy with the original, shall return the book to the claimant.

Power to exclude documents not produced with claim.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Claim not duly notified to be barred.

14. Every such claim (other than claims of the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section nineteen, clause (*d*), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged:

Admission of claims within further period of six months.

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section twelve, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

Determination of debts and liabilities.

15. The manager shall inquire into the history and merits of every claim received under sections twelve and fourteen, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

Power to rank debts and to fix interest.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

Scheme for liquidation.

17. When the total amount of the debts and liabilities (including those due and incurred to Government) has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) shewing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Provisions of scheme.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section eleven, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act, and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

Proceedings of Commissioner on submission of scheme.

18. The Commissioner may—

(*a*) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(*b*) sanction any liquidation-scheme, or any revised liquidation-scheme, submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

Power to relinquish management.

19. At any time before he has sanctioned a liquidation-scheme under section eighteen, the Commissioner may, by an order published in the *Bombay Government Gazette*, direct that on a date fixed by such order the management shall be relinquished.

On the date so fixed—

(*a*) the management shall terminate;

(*b*) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section ten;

(*c*) any residue of the rents and profits of the said property retained under the last clause of section eleven shall be paid to him; and

(*d*) the proceedings, processes, executions and attachments stayed and suspended under section nine, and the debts and liabilities barred by section fourteen, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

Effects of sanctioning scheme.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the local Government may from time to time by rule direct; and thereupon—

1*st*, all proceedings, processes, executions and attachments stayed or suspended under section nine shall be for ever barred, and

2*nd*, every debt or liability due or owing to any person which was proveable before the manager shall be extinguished, and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability.

Power to remove mortgagee in possession.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue year.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV of this Act.

Power to inquire into consideration given for leases.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager may inquire into the sufficiency of the consideration for which the lease was given; and if such consideration appear to him insufficient, may by order, with the consent of the Commissioner, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and in default of such payment, the lease shall be cancelled.

Power to lease.

23. Subject to the rules made under section thirty-one, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

Power to raise money by mortgage or sale.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme—

(*a*) by mortgaging the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(*b*) by charging the whole or any part of such property; or

(*c*) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(*d*) by borrowing money from Government at such rate of interest as appears reasonable to the local Government.

Manager's receipt a discharge.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

Termination of management.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (*d*) of section twenty-four, together with the interest (if any) due thereon, have been paid and discharged as therein provided, or in such other manner as the Commissioner thinks fit, the manager shall publish in the *Bombay Government Gazette* a notice fixing a date for the termination of the management.

Restoration of owner.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section twenty-four, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections ten, twenty-three and twenty-four.

Death of debtor during management.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided—

1*st*, the management shall continue and proceed in all respects as if such debtor were still living;

2*ndly*, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (*b*) and (*c*) of section nine; and

3*rdly*, no civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management, for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

Mortgages, &c., made by restored Thákur valid only for his life.

28. When a Thákur has been restored under section twenty-six to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such Thákur, shall be valid as to any time beyond his natural life.

CHAPTER VI.

OF APPEAL AND REVISION.

Appeal.

29. An appeal against any decision or order under sections fourteen, fifteen, sixteen and twenty-two, or imposing a fine or imprisonment in exercise of the powers conferred by section thirty-five, shall lie to the Commissioner, if preferred within six weeks from the date of such decison or order.

There shall be no appeal against the decision of the Commissioner on such appeal.

Power to call for proceedings and pass order thereon.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

CHAPTER VII.

MISCELLANEOUS.

Power to make rules.

31. The local Government may, from time to time, make rules consistent with this Act—

(*a*) to regulate the security to be required from subordinate officers under this Act;

(*b*) to regulate the procedure in all cases under this Act;

(*c*) for the guidance of officers enquiring into and determining on claims under Chapter IV of this Act; and in particular as to the allowance of interest (if any) on each of the principal debts and

liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

(*d*) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities; and

(*e*) generally to carry out the provisions of this Act.

Such rules shall be published in the *Bombay Government Gazette*, and when so published shall have the force of law.

Power to appoint new manager.

32. The local Government may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

Managers and their agents to be public servants.

33. Every manager appointed under this Act and every agent of such manager shall be deemed a public servant within the meaning of the Indian Penal Code.

Investigation, a judicial proceeding.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

Power to summon witnesses and compel production of documents.

35. For the purposes of this Act, the manager and any officer making an inquiry under section five may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible, in the same manner, as is provided in the case of a civil Court by the Code of Civil Procedure.

Bar of suits.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

Saving of jurisdiction of Courts in Broach and Kaira in respect of certain suits.

37. Nothing in this Act precludes the Courts in Broach and Kaira having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

Exemption of certain Thákurs from certain provisions of Act.

38. Nothing in section nine shall be deemed to render any of the following Thákurs, namely, the Thákur of Ahmod, the Thákur of Sarod, the Thákur of Kerwára, the Thákur of Dehej, and the Thákur of Janiádra incompetent to enter into contracts involving him in pecuniary liability, nor shall anything in section twenty-eight apply to any of the said Thákurs:

Provided that, if any such Thákur has, since the scheme for the settlement of his debts and liabilities was approved under section 11 of the said Act No. XV of 1871, entered into any contract involving him in pecuniary liability exceeding the average annual income derived during the previous five years from his immoveable property after deducting therefrom the land-tax and other dues of Government, the local Government may, by notification in the *Bombay Government Gazette*, declare that the exemption made by the former part of this section shall cease in his case, and thereupon such exemption shall cease accordingly.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY OCTOBER 29, 1881.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th October, 1881, and is hereby promulgated for general information:—

[illegible] No. XXII of 1881.

THE EXCISE ACT, 1881.

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An Act to amend the law relating to the Excise-revenue in Northern India, British Burma and Coorg.

WHEREAS it is expedient to amend the law in force in Northern India, British Burma and Coorg relating to the production, sale, possession and import of spirit, fermented liquors and intoxicating drugs, and the collection of the revenue derived therefrom; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Excise Act, 1881": Short title.

It extends to the territories administered respectively by the Lieutenant-Governors of the North-Western Provinces and the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Ajmer and Merwára; and Local extent.

it shall come into force on the first day of January, 1882. Commencement.

2. On and from that day the Excise Act, 1871, shall be repealed, but all rules made, powers conferred and licenses and farms granted under that Act and in force on the same day shall be deemed to have been respectively made, conferred and granted under this Act. Repeal of Act X of 1871.

3. In this Act— Interpretation-clause.

(a) "Chief Revenue-authority" means— "Chief Revenue-authority":

in the territories administered by the Lieutenant-Governor of the North-Western Provinces—the Board of Revenue,

in the territories administered by the Lieutenant-Governor of the Panjáb—the Financial Commissioner; and

in the territories respectively administered by the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Ajmer and Merwára—the Chief Commissioner:

(b) "Collector" includes any Revenue-officer in independent charge of a District and any officer appointed by the Local Government to discharge, throughout any specified local area, the functions of a Collector under this Act: "Collector":

"Commissioner of Revenue" means any officer appointed by the Local Government to discharge, throughout any specified local area, the functions of a Commissioner of Revenue under this Act: "Commissioner of Revenue":

(c) "Magistrate" means any Magistrate exercising powers not less than those of a Magistrate of the second class, or any Magistrate of the third class specially authorized in this behalf by the Magistrate of the District: "Magistrate":

(d) "Place" includes shop, house, boat and raft: "Place":

(e) "Tári" means the sap of any kind of palm-tree. "Tári":

(f) "Fermented liquor" means malt liquor, wine, pachwai and fermented tári, and, in any provision of this Act, shall, if the Local Government, subject to the control of the Governor General in Council, so directs, include any other fermented liquor, and also tári though it may not have perceptibly begun to ferment: "Fermented liquor":

(g) "Spirit" means any liquor containing alcohol obtained by distillation: "Spirit":

(h) The expression "intoxicating drugs" means ganja, bhang, charas, and every preparation and admixture of the same: "Intoxicating drugs":

(i) "Tola" means a weight of one hundred and eighty grains Troy: "Tola":

(j) "Ser" means a weight of eighty tolas: "Ser":

(k) The articles next hereinafter mentioned shall be deemed to be sold retail within the meaning of this Act when sold in quantities not exceeding those next hereinafter specified in respect of them, that is to say,— "Retail":

Foreign spirit or foreign fermented liquor, two imperial gallons or twelve reputed quart bottles;

country spirit, one ser, and in British Burma one reputed quart bottle;

country fermented liquor, four sers, and in British Burma four reputed quart bottles;

bhang, or any preparation or admixture thereof, one quarter of a ser;

ganja or charas, or any preparation or admixture thereof, five tolas:

If sold in larger quantities they shall be deemed to be sold wholesale. "Wholesale."

In any case in which doubt arises the Local Government may decide what for the purposes of this Act shall be deemed to be "country spirit," "country fermented liquor," "foreign spirit," and "foreign fermented liquor"; and such decision shall be binding on the Courts. "Country spirit": "Foreign spirit."

4. Nothing herein contained shall affect Act No. XVI of 1863 (*to make special provision for the levy of the Excise Duty payable on Spirits used exclusively in Arts and Manufactures or in Chemistry*) or the Cantonments Act, 1880. Saving of Acts XVI of 1863 and III of 1880.

CHAPTER II.

CONSUMPTION OF SPIRIT, FERMENTED LIQUOR AND INTOXICATING DRUGS.

5. No person shall construct, work or possess a distillery, still or brewery, or manufacture fermented liquor, in any district except under a license granted by the Collector or by a person authorised by the Collector to grant such license, and in accordance with the conditions (if any) contained therein. Manufacture of spirit and liquor without license prohibited.

6. The Collector may, with the previous sanction of the Chief Revenue-authority, from time to time, Power for establishment of distilleries for country spirit.

(a) establish at any place within his district a distillery in which country spirit may be made, and discontinue any distillery so established;

(b) fix limits within his district within which no such spirit, unless made in the said distillery, shall be introduced without a pass from him.

7. No spirit shall be removed from any distillery licensed under section five or established under section six, until— Duty on spirit.

(a) the duty payable in respect of such spirit under the Indian Tariff Act, 1875, section eleven, has been paid, or

(b) a bond for such duty has been executed, or

(c) a duty in respect of the materials used in making such spirit has been levied at such rates and in such manner as the Local Government, with the previous sanction of the Governor General in Council, may from time to time direct.

8. The Chief Revenue-authority may, from time to time, make rules as to— Power to make rules as to distilleries and breweries licensed under section 5.

(a) the granting of licenses for distilleries, stills and breweries under section five;

(b) the notices to be given by the proprietor of a licensed distillery when he commences and discontinues work;

(c) the size and description of the stills in such distillery;

(d) the storing and passing out of the spirit made in such distillery, and the contents of the passes;

(e) the inspection and examination of the distillery and warehouses, and of the spirit made and stored therein;

(f) the furnishing of statements of the spirit, and of the stills, coppers, casks and other utensils, in the distillery.

9. The Chief Revenue-authority may, from time to time, make rules as to— And for distilleries established under section 6.

(a) the management of distilleries established under section six, and in particular as to the conditions on which any materials to be used in making spirit may be brought into such distillery;

(b) the conditions on which spirit may be made in such distilleries; and

(c) the storing and passing out of the spirit so made, and the contents of the passes.

10. Except in the territories respectively administered by the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg and Ajmer and Merwára, the sanction of the Local Government is required to validate rules under sections eight and nine. Sanction to rules under sections 8 and 9.

11. In British Burma, the cultivation of hemp and the preparation of intoxicating drugs therefrom are prohibited except under, and in accordance with, a license granted by such officer as the Chief Commissioner may from time to time appoint in this behalf. Production of intoxicating drugs.

In the other territories to which this Act extends, the Chief Revenue-authority may, from time to time, make such rules to restrict and regulate the

cultivation of hemp and the preparation of intoxicating drugs therefrom as it may deem necessary to secure the duty leviable in respect of those drugs.

CHAPTER III.

SALE OF SPIRIT, FERMENTED LIQUOR AND INTOXICATING DRUGS.

Spirit, fermented liquor and drugs not to be sold without license.

12. No spirit, fermented liquor or intoxicating drug shall be sold except under, and in accordance with the terms of, a license granted under the provisions hereinafter contained.

Proviso.

Provided as follows—

(*a*) nothing in this section applies to the sale of any foreign spirit or foreign fermented liquor legally procured by any person for his private use and sold by him or by auction on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease;

(*b*) any officer empowered in this behalf by the Chief Revenue-authority may grant to travelling merchants, subject to such rules and restrictions as such authority may from time to time prescribe, a general license authorizing them to sell foreign spirit and foreign fermented liquor wholesale in any district which they may visit in the course of their travels, without taking out a fresh license for that district;

(*c*) any person making or producing country spirit or country fermented liquor, in accordance with the provisions of this Act, may, subject to any rules from time to time made by the Local Government in this behalf, sell such spirit or liquor to any person licensed under this Act as a retail vendor of such spirit or liquor;

(*d*) any cultivator of the hemp plant may sell any intoxicating drug prepared from his plants to any person licensed under this Act to sell the same, or to any person authorized to purchase the same by the Collector's order in writing.

Licenses how granted.

13. Subject to the rules made by the Chief Controlling Revenue-authority under the power hereinafter conferred, the Collector may grant licenses for the sale of foreign spirit and foreign fermented liquor, wholesale or retail, and for the retail sale of country spirit or country fermented liquor, and (except in British Burma) of intoxicating drugs, within his district or any part thereof or at any place therein.

Licenses for the sale of country spirit and country fermented liquor and intoxicating drugs, wholesale, and licenses for the sale, in British Burma, of intoxicating drugs, retail, shall be granted only by such officer as the Local Government from time to time appoints in this behalf.

Power to cancel license for cause specified therein.

Any license granted under this section may be cancelled by the Collector for any cause specified therein.

Power to cancel license for other causes.

14. Whenever the Collector considers that the license of a vendor of country spirit, country fermented liquor or intoxicating drugs should be cancelled for any cause other than those specified in such license, he shall remit a sum equal to the amount of the license-fee for fifteen days, and shall either give fifteen days' previous notice of his intention to cancel the license, or shall, in addition to remitting such sum as aforesaid, make such compensation for default of notice as the Commissioner of Revenue or Chief Revenue-authority directs.

On the expiration of such notice or the payment of such additional compensation, the Collector may cancel the said license.

Surrender of retail license.

15. Any retail vendor licensed under this Act may surrender his license on the expiration of one month's previous notice given by him to the Collector of his intention to surrender the same, and on payment of such sum, not exceeding the amount of the license-fee for six months, as the Collector may fix in this behalf.

If the Collector is satisfied that there is a sufficient reason for surrendering a license, he may remit the sum so fixed.

Power to farm fees.

16. The Collector may, with the sanction of the Chief Revenue-authority, let in farm—

(*a*) the fees leviable in any district or part of a district on licenses for the retail sale of any description of country spirit or country fermented liquor or (except in British Burma) of intoxicating drugs:

(*b*) the right to manufacture, in any district or part of a district in which no distillery is established under section six, country spirit or country fermented liquor.

Farmer to grant licenses.

When the fees so leviable or the right to manufacture such spirit or liquor, or both, are or is let in farm, the farmer may, subject to such reservations or restrictions as the Collector, with the sanction of the Chief Revenue-authority, may from time to time make or impose, grant licenses for the retail sale, or for the manufacture, or for both, as the case may be, of such articles within the local limits of his farm, and shall file in the Collector's office a list of all the licenses granted by him in such form and on such day or days in each year as the Chief Revenue-authority may, from time to time, prescribe in this behalf.

List of licenses granted by farmer to be filed.

Farm may be cancelled.

17. The Collector may, with the sanction of the Chief Revenue-authority, cancel any farm granted under this Act.

Compensation to farmers in certain cases.

18. If any such farm be cancelled for any cause other than a breach on the part of the farmer of the conditions of the farm, or if any reservation or restriction with respect to the grant of licenses be made or imposed within the term of the farm, the farmer shall be entitled to receive for any loss which he sustains thereby such compensation as the Chief Revenue-authority may determine.

Recovery of arrears by farmers.

19. Every farmer under this Act may use the same means and processes for the recovery of any arrear of fees due to him from any retail vendor as may be lawfully used by the local landholders for the recovery of arrears of rent due to them from their tenants.

Power to regulate supply of tárí and intoxicating drugs to licensed vendors.

20. The Chief Revenue-authority may, from time to time, make rules to regulate the mode in which tárí shall be supplied to licensed vendors of the same, and the grant of licenses or passes to persons possessing or transporting intoxicating drugs for the supply of the licensed vendors of such drugs.

CHAPTER IV.

POSSESSION OF SPIRIT, FERMENTED LIQUOR AND INTOXICATING DRUGS.

Possession of spirit, &c.

21. No person shall have in his possession any quantity of any spirit or fermented liquor larger than that specified in section three, clause (*k*), in respect of such spirit or liquor, unless he is permitted to manufacture or sell the same, or he holds a pass therefor from the Collector or from some other officer empowered by the Local Government to grant such passes.

Proviso.

Nothing in this section extends to—

(*a*) any foreign spirit or foreign fermented liquor in the possession of any common carrier or warehouse-man as such, or purchased by any person for his private use and not for sale, or

(*b*) tárí intended to be used for the manufacture of gúr or molasses.

Possession of intoxicating drugs.

22. In British Burma no person shall have in his possession any intoxicating drugs except under, and in accordance with the terms of, a general exemption granted by the Chief Commissioner, or a license granted by such officer as the Chief Commissioner may, from time to time, appoint in this behalf.

In the other territories to which this Act extends, no person shall have in his possession any larger quantity of such drugs than that specified in section three, clause (*k*), in respect of such drugs, unless he is permitted to manufacture or sell the same.

CHAPTER V.

IMPORT OF SPIRIT.

Spirit from foreign territory subject to duty.

23. No person shall bring into any territory to which this Act extends any spirit manufactured at any place in India beyond the limits of British India, until duty equal to the duty prescribed for such spirit under the Indian Tariff Act, 1875, section [illegible], has been paid in respect thereof and a pass has been obtained therefor from such officer as the Local Government may, from time to time, appoint in this behalf.

CHAPTER VI.

OFFICERS AND THEIR POWERS.

Collectors may appoint Excise-officers.

24. The Collector may appoint persons, by name or by virtue of their office, to be officers for the collection of the excise-revenue and for the prevention of offences against this Act; and the officers so appointed shall, in addition to their ordinary designations (if any), be styled Excise-officers.

Recovery of arrears of fees.

25. The Collector may recover any amount due to the Government under this Act or the rules made hereunder, by distress and sale of the moveable property of the person from whom such amount is due or of his surety, or by any other process for the time being in force for the recovery of arrears of land-revenue due from landholders or from farmers of land or their sureties.

Power of Excise-officers to inspect shops.

26. Any Excise-officer may enter and inspect at any time by day or by night the shop or premises in which any manufacturer or vendor licensed under this Act carries on the manufacture of country spirit, or the sale of country spirit, country fermented liquor or intoxicating drugs.

To arrest persons carrying spirit, &c., liable to confiscation.

27. Any Excise-officer may stop and detain any person carrying any spirit, fermented liquor or intoxicating drug liable to confiscation under this Act;

and may seize such spirit, liquor or drug, together with any vessels, packages or coverings in which it is contained, and any animals and conveyances used in carrying it;

and may also arrest the person in whose possession such spirit, liquor or drug is found.

To arrest persons in possession of article liable to confiscation, and to seize article.

28. Any Excise-officer in the receipt of a monthly salary of not less than ten rupees may arrest any person having in his possession any article liable to confiscation under this Act, or engaged in the unlawful sale of any spirit, fermented liquor or intoxicating drug, and may seize such article, spirit, liquor or drug.

To search on information of illicit manufacture or possession.

29. Whenever any Excise-officer in receipt of such monthly salary as aforesaid has reason to believe, from information given by any person (which information shall be taken down in writing), that in any place spirit is unlawfully manufactured, or any article liable to confiscation under this Act is kept or concealed,

such officer may, after sunrise and before sunset (but always in the presence of an officer of police in the receipt of a monthly salary of not less than ten rupees), enter into such place,

and in case of resistance may break open any door and force and remove any other obstacle to such entry, and may seize and carry away such spirit or article,

and may also arrest the occupier of the place, with all other persons concerned in the manufacture of such spirit or in the keeping and concealing of such article.

Collector may issue warrant of arrest in certain cases.

30. The Collector may issue his warrant for the arrest of any person whom he has reason to believe, either from information in writing, or from the proceedings in any other case under this Act or any other law, to be engaged in the unlawful sale of spirit or fermented liquor or intoxicating drugs, or to have in his possession any article liable to confiscation under this Act.

Collector may issue search-warrant.

31. The Collector may issue his warrant for the search of any place in which he has reason to believe

either from information in writing, or from the proceedings in any other case under this Act or any other law, that spirit is unlawfully manufactured, or that any spirit, fermented liquor or intoxicating drug liable to confiscation under this Act is kept or concealed.

Such warrant may be executed by any Excise-officer in the receipt of a monthly salary of not less than ten rupees, at the time and in the manner prescribed in section twenty-nine.

Special warrant authorizing search at night.

Whenever the Collector thinks that the search should be made after sunset and before sunrise on any particular day, he shall issue a warrant specially authorizing the search to be so made. Such warrant may be executed by any Excise-officer as aforesaid in the manner prescribed in section twenty-nine, and shall cease to be in force at sunrise on the day next following.

Excise-officer to report arrest, &c.;

32. Whenever an Excise-officer arrests any person,

or seizes any article liable to confiscation under this Act,

or enters any place for the purpose of searching for any such article,

he shall, within twenty-four hours thereafter, make a full report of all the particulars of such arrest, seizure or search, to his official superior, and, unless acting under the warrant of the Collector, shall take the person arrested, or the article seized, with all convenient despatch to the Magistrate for trial or adjudication.

and to take person arrested to Magistrate.

Procedure after arrest or seizure.

33. Whenever any person is arrested or any article is seized under the warrant of a Collector issued under this Act, the officer making such arrest or seizure shall, within twenty-four hours thereafter, take the person arrested or the article seized, to the Collector, and the Collector, after such enquiry as he thinks necessary, shall send such person or article to the nearest Magistrate, or shall order the immediate discharge of such person or the release of such article.

Police to aid Excise-officers.

34. All Police-officers are required to aid the Excise-officers in the due execution of this Act, upon request made by such officers.

CHAPTER VII.

PENALTIES.

For illegally manufacturing spirit or liquor.

35. Whoever in contravention of section five constructs, works or possesses a distillery, still or brewery, or makes fermented liquor, shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both;

and all spirit and liquor made in contravention of section five, and all materials and implements collected for the purpose of such manufacture, shall be liable to confiscation.

36. Any person who—

(*a*) without a special pass from the Collector, introduces, into the limits fixed for the consumption of spirit made at a distillery established under section six, any country spirit manufactured at another place, or

For illegally introducing country spirit.

(*b*) in contravention of section seven, or of any rule made under section eight or section nine, removes any spirit from a distillery, or

For illegally removing spirit.

(*c*) in contravention of section twenty-three, brings any spirit into any territory to which this Act extends,

For illegally importing spirit.

shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both;

and the spirit, together with the vessels containing the same, and any animals and conveyances used in carrying it, shall be liable to confiscation.

For contravening rules prescribed by Chief Revenue-authority.

37. Any person who, except in cases herein otherwise provided for, wilfully contravenes any rule made under section eight or section nine shall be punished with fine not exceeding one hundred rupees.

For illegally cultivating hemp and preparing drugs.

38. Any person who, in contravention of section eleven or of any rule made thereunder, cultivates hemp or prepares any intoxicating drug, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

For illicit sale of spirit, &c.

39. Any person who, in contravention of section twelve, sells any spirit, fermented liquor or intoxicating drug, shall be punished with imprisonment for a term which may extend to four months, or with a fine which may extend to one thousand rupees, or with both.

For permitting drunkenness, &c., in shop.

40. Any person licensed to sell retail spirit, or fermented liquor, or intoxicating drugs, who permits drunkenness, riot or gaming in his shop, or permits persons of notoriously bad character to meet or remain therein, or receives any wearing apparel or other effects in barter for spirit, fermented liquor or intoxicating drugs, shall be punished with fine which may extend to two hundred rupees.

Illegal possession of spirit, liquor or drug.

41. Any person who possesses any spirit, liquor or drug, in contravention of section twenty-one or section twenty-two, shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both;

and the spirit, liquor or drug, together with any vessels, packages and coverings in which it is contained, and any animals and conveyances used in carrying it, shall be liable to confiscation.

For refusal to produce license and for breach of rules and conditions.

42. Any person holding a license under this Act and refusing to produce the same on the demand of any Excise-officer, and any person who breaks any rule made under this Act or any condition of a license granted under this Act, for the breach of which rule or condition no other penalty is hereby provided, shall be punished with fine which may extend to fifty rupees.

For conniving at illicit manufacture or sale of spirit, &c.

43. Any owner or occupier of land, and any agent of any such owner or occupier, who authorizes or connives at the illegal manufacture of spirit or the sale of spirit or fermented liquor or intoxicating drugs, shall for every such offence be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both.

And any person invested with local jurisdiction who authorizes or connives at the illegal sale of any spirit, fermented liquor or intoxicating drug within the local limits of such jurisdiction shall be punished with fine which may extend to five hundred rupees.

For Police neglecting to aid Excise-officers.

44. Any Police-officer who, without lawful excuse, neglects or refuses to aid an Excise-officer as required by section thirty-four, and any officer in charge of a Police station who, on application made by an Excise-officer desiring to act under section twenty-nine, fails to attend a search himself, or to depute a subordinate officer of the required rank, shall be punished with fine which may extend to five hundred rupees.

45. Any Excise-officer who—

(*a*) without reasonable grounds of suspicion searches or causes to be searched any place, or

For vexatious search or seizure.

(*b*) vexatiously and unnecessarily seizes the moveable property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act, or

(*c*) vexatiously and unnecessarily arrests any person, or

(*d*) commits any other excess not required for the execution of his duty,

shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

For delay in reporting arrest, &c., or in taking person arrested to Magistrate.

46. Any Excise-officer who, in contravention of section thirty-two or section thirty-three, neglects to report the particulars of an arrest, seizure or search, or delays taking to the Magistrate or Collector, as the case may be, any person arrested or any article seized under this Act, shall be punished with fine which may extend to two hundred rupees.

Prosecutions restricted.

47. No complaint of an offence under any one of the following sections, namely, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty-one, forty-two and forty-three, shall be received unless it is made by the Collector or by an Excise-officer; and no complaint of any offence under this Act shall be received unless it is made within the six months next after the commission of such offence.

Confinement in what jail.

48. Every person imprisoned for an offence under section thirty-seven or section forty-two shall be confined in the civil jail, and every person imprisoned for an offence under any other section shall be confined in the criminal jail.

Attempts and abetment.

49. Whoever attempts to commit any offence punishable under this Act or abets within the meaning of the Indian Penal Code the commission of any such offence shall be punished with the punishment provided for such offence.

Disposal of fines, &c., as rewards.

50. Any Magistrate before whom any person is convicted of any offence under sections thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty-one or forty-three may award to any person who has contributed in any way to such conviction the whole or any portion of any fine imposed upon the offender and paid by him or realized from his property.

Magistrate to pass order of confiscation.

51. Any article liable to confiscation under this Act may, on the application of an Excise-officer, be confiscated by the order of any Magistrate within the local limits of whose jurisdiction it is found.

CHAPTER VIII.

MILITARY CANTONMENTS.

Manufacture and sale of spirits, &c., in military cantonments.

52. Within the limits of any military cantonment, and within such distance from those limits as the Local Government in any case prescribes, no licenses for the manufacture of spirit, or for the sale of spirit or fermented liquor, shall be granted, nor shall the fees leviable on licenses for the retail sale of such spirit or liquor, or the right to manufacture such spirit or liquor be let in farm, unless with the knowledge and consent of the Commanding Officer;

and upon his requisition any such license which has been granted, either by the Collector or by a farmer, within such distance or limits shall be immediately cancelled.

Mode of making arrest or search in military cantonments.

53. In all other respects the provisions of this Act shall have effect within such limits or distance: Provided that whenever any arrest or search under this Act is to be made within the limits of any cantonment, the Collector or other officer authorized to make such arrest or search shall, whenever it may be practicable, give previous notice to the Commanding Officer, and in all other cases shall report the arrest or search to such Commanding Officer with as little delay as possible.

CHAPTER IX.

MISCELLANEOUS.

Collector subject to control of Commissioner.

54. The Collector shall in all proceedings under this Act be subject to the control of the Commissioner of Revenue, and all orders passed by a Collector under this Act shall be appealable to such Commissioner in manner provided by the rules for the time being in force relating to appeals from the orders of Collectors.

The Chief Revenue-authority may revise any order passed by a Collector under this Act or by a Commissioner under this section.

Additional power to make rules.

55. The Chief Controlling Revenue-authority may, from time to time, make rules consistent with this Act—

(*a*) as to the period for which any license or farm under this Act shall be granted;

(*b*) as to the fee payable for any such license or farm, and the time or times at which it shall be payable;

(*c*) as to the security to be given by any licensee or farmer under this Act;

(*d*) as to the form of any license or farming lease and of the counterpart thereof (if any) to be taken from such licensee or farmer, and the conditions which may be inserted therein;

(*e*) as to the disposal of things confiscated under this Act;

(*f*) as to the duties of Excise-officers; and

(*g*) to provide generally for carrying out the provisions of this Act.

Power to exempt articles and persons.

56. The Local Government may from time to time, by notification in the official Gazette, exempt within any specified local area any specified articles or any specified class of persons from all or any of the foregoing provisions of this Act, and may, by like notification, cancel any such exemption.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th October, 1881, and is hereby promulgated for general information:—

ACT No. XXIII OF 1881.

An Act to amend the Dekkhan Agriculturists' Relief Act, 1879.

Preamble.

WHEREAS it is expedient to amend, in manner hereinafter appearing, the Dekkhan Agriculturists' Relief Act, 1879; It is hereby enacted as follows:—

Short title.

Commencement.

1. This Act may be called "The Dekkhan Agriculturists' Relief Act, 1881"; and it shall come into force at once.

"Section."

2. In this Act "section" means a section of the Dekkhan Agriculturists' Relief Act, 1879.

Amendment of section 1.

3. In section one, before the word "Sections," the words "This section and" shall be, and be deemed to have always been, inserted.

Amendment of section 2, clause (2).

4. For section two, clause (2), the following shall be substituted:—

'Agriculturist.'

"'Agriculturist' means a person who, when or after incurring any liability the subject of any proceeding under this Act, by himself, his servants or tenants earned or earns his livelihood, wholly or partially, by agriculture carried on within the limits of the said districts.

"A cultivator who has temporarily ceased to earn his livelihood in manner aforesaid, without any intention of changing his status as such, does not thereby cease to be an agriculturist within this definition.

"An assignee of Government assessment or a mortgagee is not, as such, an agriculturist within this definition.

"An agriculturist shall be deemed to 'reside' where he earns his livelihood in manner aforesaid."

Amendment of sections 3 and 12.

5. In section three, clause (*y*), the words "not being merely a surety for the principal debtor," and in section twelve the words "not being merely a surety of the principal debtor," shall be omitted.

Amendment of section 19.

6. In section nineteen, first clause, for the words "there is no other claim against him," the words "the other debts (if any) due by him do not, taken together with such sum, amount to fifty rupees" shall be substituted; and to the same clause the words "of such sum" shall be added.

Addition to section 38.

7. To section 38, the following shall be added:—

"The expression 'officer of police' in this section shall not be deemed to include a police patel appointed under Bombay Act No. VIII of 1867 (*for the Regulation of the Village Police in the Presidency of Bombay*)."

Amendment of section 44.

8. In section forty-four, for the word "place," the word "táluqa" shall be substituted.

Addition to section 47.

9. To section forty-seven the following shall be added, namely:—

"*Explanation.*—The expression 'civil Court' in this section does not include a Mámlatdár's Court under Bombay Act No. III of 1876 (*to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts*)."

New section substituted for section 48.

10. For section forty-eight the following section shall be substituted:—

Allowance to be made in period of limitation.

"48. In computing the period of limitation prescribed for any such suit or application the time intervening between the application made by the plaintiff under section thirty-nine and the grant of the certificate under section forty-six shall be excluded.

Limitation in certain cases.

"Any such application which after the first day of November, 1879, has been rejected, and which, if such time had been excluded in computing the period of limitation prescribed for such application, would have been entertained, shall be entertained if made within two months from the twenty-sixth day of October, 1881.

New section substituted for section 51.

11. For section fifty-one the following section shall be substituted:—

District Judge may withdraw case from Conciliator or Subordinate Judge,

"51. The District Judge may—

"(*a*) transfer any application pending before a Conciliator to the file of any other Conciliator;

"(*b*) transfer to his own file any suit or other matter pending before the Court of any Subordinate Judge under Chapter II or Chapter IV of this Act, and may dispose of the same as if he were a Subordinate Judge; or

"(c) stay the proceedings in any such suit or matter, and sit together with such Judge as a Bench to dispose of such suit or matter in accordance with the provisions of this Act.

or sit with Subordinate Judge as a Bench for trial of any case.

"If the members of any Bench sitting under this section differ in opinion, the opinion of the District Judge shall prevail."

Addition to section 56.

12. To section fifty-six the following shall be added, namely :—

"or apply to any instrument which is executed by an agriculturist merely as a surety."

New section substituted for section 57.

13. For section fifty-seven the following section shall be substituted :—

"57. When any persons intend to execute any instrument to which section fifty-six applies, all such persons shall appear before the Village Registrar appointed for the area in which the agriculturist, or when there are several agriculturists intending to execute the instrument, any one of such agriculturists, resides, and such Registrar, after satisfying himself in such manner as he deems fit as to the identity of the intending executants and receiving the fee (if any) prescribed by the local Government in this behalf, and the stamp (if any) which may be required by law, shall write the instrument, or cause the same to be written under his superintendence; and after reading the same aloud, or causing it to be so read, in the hearing of the intending executants, shall require them to execute it in his presence.

Such instruments to be written by, or under the superintendence of, a Village Registrar and executed in his presence.

"Every instrument so written and executed shall at the time of execution be attested by the Village Registrar; and also, if any of the executants thereof is unable to read such instrument, by two respectable witnesses.

Attestation of such instruments.

"For the purposes of this section every executant of any such instrument shall appear in person before the Village Registrar; but every other party thereto may appear either in person or by any agent, being his relative, servant or dependent, whom he has duly furnished with a power-of-attorney authorizing him to appear and act on his behalf."

14. In section fifty-eight, for the words "parties to any instrument have executed it," the words "intending executants have executed any instrument" shall be substituted.

Amendment of section 58.

New section substituted for section 68.

15. For section sixty-eight the following section shall be substituted :—

"68. No pleader, vakíl or mukhtár, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any case before a Conciliator or a Village-Munsif the subject-matter whereof does not exceed in amount or value one hundred rupees:

Pleaders, &c., excluded in certain cases.

"Provided that any party to any such case may be permitted, on reasonable cause being shown to the satisfaction of the Conciliator or Village-Munsif, to employ any relative, servant or dependent who is not, and has not previously been, a pleader, vakíl or mukhtár, or an advocate or attorney of a High Court, to appear either conjointly with, or in lieu of, such party.

"When a relative, servant or dependent appears in lieu of a party, he shall be furnished by him with a power-of-attorney defining the extent to which he is empowered to act."

Repeal of section 71.

16. Section seventy-one is hereby repealed.

New section substituted for section 72.

17. For section seventy-two the following section shall be substituted :—

"72. In any suit under this Act for the recovery of money from a person, not being merely a surety for the principal debtor, who at the time when the cause of action arose was an agriculturist, the following periods of limitation shall be deemed to be substituted for those prescribed in the second column of the second schedule annexed to the Indian Limitation Act, 1877 (that is to say) :—

Limitation.

"(a) When such suit is founded on a written instrument registered under this Act or any law in force at the date of the execution of such instrument,—twelve years;

"(b) in any other case,—six years:

"Provided that nothing herein contained shall revive the right to bring any suit which would have been barred by limitation if it had been instituted immediately before this Act comes into force."

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th October, 1881, and is hereby promulgated for general information :—

ACT No. XXIV OF 1881.

An Act to amend the Panjáb Laws Act, 1872.

WHEREAS, in order to provide for the establishment of a system of municipal-watchmen in certain municipalities in the territories administered by the Lieutenant-Governor of the Panjáb, it is expedient to amend the Panjáb Laws Act, 1872; It is hereby enacted as follows :—

Preamble.

1. This Act may be called "The Panjáb Laws Amendment Act, 1881," and shall come into force at once.

Short title.

Commencement.

2. For sections 39A and 39B of the said Act, the following sections shall be substituted :—

Substitution of new sections for sections 39A and 39B.

"39A. The Local Government may establish a system of village-watchmen or municipal-watchmen in any part of the territories under its administration, and in furtherance of this object may, from time to time, make rules to provide for the following matters :—

Power to establish system of village-watchmen and municipal-watchmen, and to make rules.

(a) the definition of the limits of watchmen's beats;

(b) the determination of the several grades of watchmen, and the number of each grade to be appointed to each beat;

(c) the appointment, suspension, dismissal and resignation of watchmen of each grade;

(d) the equipment and discipline of, and the control and supervision over, such watchmen;

(e) the conferring upon them, and the exercise by them, of any powers, and the enjoyment by them of any protection or privilege, which may be exercised and enjoyed by a police-officer under any law for the time being in force;

(f) the performance by them of such duties relating to police, sanitation or statistics, or for the benefit of the village-communities or municipalities within their respective beats, as the Local Government thinks fit;

(g) the exercise of authority over, and the rendering of aid to, such watchmen by headmen of the villages or members of the Municipal Committees of the towns comprised in their respective beats;

(h) the performance, by the headmen of villages comprised in the beat of any watchman, of any of the duties of a village-watchman in aid of, or substitution for, such watchman;

(i) the exercise, by such village-headmen for the purposes referred to in clauses (g) and (h), or by members of Municipal Committees for the purposes referred to in clause (g) of this section, of any of the powers, and the enjoyment by such headmen or members of any privilege or protection, of a village-watchman or a municipal-watchman as the case may be;

(j) the determination of the rate at which, and the mode in which, watchmen shall be paid, and, in the case of village-watchmen, of the mode in which their pay, the expenses of their equipment, and other charges connected with the village-watchman system shall be provided for, whether out of cesses or funds already leviable or available in the villages comprised in the beat, or by a special tax in money or kind to be imposed on any class of persons residing or owning property in, or resorting to, such villages, or partly in one of these ways and partly in the other;

(k) the collection with or without the aid of the village-headmen, and by any process available for the realization of the land-revenue, of any tax imposed under clause (j) of this section, and the application of, and the mode of accounting for, the same; and generally for

(l) the efficient working of the system of village-watchmen or municipal-watchmen:

"Provided—

1st,—that the rules to be made regarding the appointment of village-watchmen shall allow to the headmen of the villages comprised in the beat to which such a watchman is to be appointed, a power of nomination to be exercised in such manner, and subject to such reasonable conditions, as may be prescribed by such rules;

2ndly,—that the rules to be made under clause (*j*) of this section with regard to village-watchmen shall include provisions for recording and securing due consideration of the views and opinions on the matters therein referred to of the headmen of the villages comprised in each beat.

"39B. Every person is bound to render to a village-watchman, or municipal-watchman, or village-headman discharging the duties of a police-officer under the rules made hereunder, all the assistance which he is bound to render to a police-officer.

Obligation to assist watchmen and headmen.

"Any person who obstructs such watchman or headman in the discharge of such duties may be arrested without warrant by a police-officer or by any watchman or village-headman empowered in this behalf by the Local Government."

Person obstructing watchman or headman may be arrested without warrant.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 27th October, 1881, and is hereby promulgated for general information:—

ACT No. XXV OF 1881.

An Act to amend the law in force in the Mahál of Bánki.

WHEREAS it has been determined to annex the territory comprised in the mahál of Bánki to the district of Katak:

Preamble.

And whereas the said territory forms portion of a scheduled district under the Scheduled Districts Act, 1874:

And whereas it is expedient that the law in force in the said territory should, on such annexation, be the same as the law in force in the district of Katak, and that the said territory should cease to be a portion of a scheduled district:

It is hereby enacted as follows:—

1. This Act may be called "The Bánki Laws Act, 1881."

Short title.

2. All enactments which shall on the first day of April, 1882, be in force in the district of Katak and not in the said territory shall be deemed to come into force in the said territory on that day:

Laws of Katak to apply.

And all enactments which shall on that day be in force in the said territory and not in the district of Katak shall be deemed to be repealed on and from that day in the said territory.

Other laws repealed.

3. All proceedings commenced before any authority in the said territory before the said first day of April, 1882, and still pending on the said day, shall be disposed of by such authority as the Local Government may direct; and, save as aforesaid, shall be carried on as if this Act had not been passed.

Pending proceedings.

4. On and from the said first day of April, 1882, the said territory shall cease to be a portion of a scheduled district; and in Part III of the first schedule to the said Scheduled Districts Act, 1874, for the words "Maháls of Angúl and Bánki," the words "Mahál of Angúl" shall be substituted;

Territory to cease to be a scheduled district.

And in the following Bengal Regulations, namely, Regulation XII of 1805, section thirty-six, Regulation XIII of 1805, section thirteen, and Regulation XI of 1816, section two, the words "Ditto Bánki" shall be repealed.

Amendment of certain Bengal Regulations.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY NOVEMBER 5, 1881.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th October, 1881, and is hereby promulgated for general information :—

Act No. XXII of 1881.

THE EXCISE ACT, 1881.

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An Act to amend the law relating to the Excise-revenue in Northern India, British Burma and Coorg.

WHEREAS it is expedient to amend the law in force in Northern India, British Burma and Coorg relating to the production, sale, possession and import of spirit, fermented liquors and intoxicating drugs, and the collection of the revenue derived therefrom; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Excise Act, 1881": Short title.

It extends to the territories administered respectively by the Lieutenant-Governors of the North-Western Provinces and the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Ajmer and Merwára; and Local extent.

it shall come into force on the first day of January, 1882. Commencement.

2. On and from that day the Excise Act, 1871, shall be repealed, but all rules made, powers conferred and licenses and farms granted under that Act and in force on the same day shall be deemed to have been respectively made, conferred and granted under this Act. Repeal of Act X of 1871.

Interpretation-clause. 3. In this Act—

"Chief Revenue-authority": (*a*) "Chief Revenue-authority" means—

in the territories administered by the Lieutenant-Governor of the North-Western Provinces—the Board of Revenue;

in the territories administered by the Lieutenant-Governor of the Panjáb—the Financial Commissioner; and

in the territories respectively administered by the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Ajmer and Merwára—the Chief Commissioner:

"Collector": (*b*) "Collector" includes any Revenue-officer in independent charge of a District and any officer appointed by the Local Government to discharge, throughout any specified local area, the functions of a Collector under this Act:

"Commissioner of Revenue": "Commissioner of Revenue" means any officer appointed by the Local Government to discharge, throughout any specified local area, the functions of a Commissioner of Revenue under this Act:

"Magistrate": (*c*) "Magistrate" means any Magistrate exercising powers not less than those of a Magistrate of the second class, or any Magistrate of the third class specially authorized in this behalf by the Magistrate of the District:

"Place": (*d*) "Place" includes also house, boat and raft:

"Tárí": (*e*) "Tárí" means the sap of any kind of palm-tree.

"Fermented liquor": (*f*) "Fermented liquor" means malt liquor, wine, pachwai and fermented tárí, and, in any provision of this Act, shall, if the Local Government, subject to the control of the Governor General in Council, so directs, include any other fermented liquor, and also tárí though it may not have perceptibly begun to ferment:

"Spirit": (*g*) "Spirit" means any liquor containing alcohol obtained by distillation:

"Intoxicating drugs": (*h*) The expression "intoxicating drugs" means gánja, bhang, charas, and every preparation and admixture of the same:

"Tola": (*i*) "Tola" means a weight of one hundred and eighty grains Troy:

"Ser": (*j*) "Ser" means a weight of eighty tolas:

"Retail": (*k*) The articles next hereinafter mentioned shall be deemed to be sold retail within the meaning of this Act when sold in quantities not exceeding those next hereinafter specified in respect of them, that is to say,—

Foreign spirit or foreign fermented liquor, two imperial gallons or twelve reputed quart bottles;

country spirit, one ser, and in British Burma one reputed quart bottle;

country fermented liquor, four sers, and in British Burma four reputed quart bottles;

bhang, or any preparation or admixture thereof, one quarter of a ser;

gánja or charas, or any preparation or admixture thereof, five tolas:

"Wholesale." **If sold in larger quantities they shall be deemed to be sold wholesale.**

"Country spirit": "Foreign spirit." In any case in which doubt arises the Local Government may decide what for the purposes of this Act shall be deemed to be "country spirit," "country fermented liquor," "foreign spirit," and "foreign fermented liquor"; and such decision shall be binding on the Courts.

Saving of Acts XVI of 1863 and III of 1880. 4. Nothing herein contained shall affect Act No. XVI of 1863 (*to make special provision for the levy of the Excise Duty payable on Spirits used exclusively in Arts and Manufactures or in Chemistry*) or the Cantonments Act, 1880.

CHAPTER II.

PRODUCTION OF SPIRIT, FERMENTED LIQUOR AND INTOXICATING DRUGS.

Manufacture of spirit and liquor without license prohibited. 5. No person shall construct, work or possess a distillery, still or brewery, or manufacture fermented liquor, in any district except under a license granted by the Collector or by a person authorised by the Collector to grant such license, and in accordance with the conditions (if any) contained therein.

Power to establish distilleries for country spirit. 6. The Collector may, with the previous sanction of the Chief Revenue-authority, from time to time,

(*a*) establish at any place within his district a distillery in which country spirit may be made, and discontinue any distillery so established;

(*b*) fix limits within his district within which no such spirit, unless made in the said distillery, shall be introduced without a pass from him.

Duty on spirit. 7. No spirit shall be removed from any distillery licensed under section five or established under section six, until—

(*a*) the duty payable in respect of such spirit under the Indian Tariff Act, 1875, section eleven, has been paid, or

(*b*) a bond for such duty has been executed, or

(*c*) a duty in respect of the materials used in making such spirit has been levied at such rates and in such manner as the Local Government, with the previous sanction of the Governor General in Council, may from time to time direct.

Power to make rules as to distilleries and breweries licensed under section 5. 8. The Chief Revenue-authority may, from time to time, make rules as to—

(*a*) the granting of licenses for distilleries, stills and breweries under section five;

(*b*) the notices to be given by the proprietor of a licensed distillery when he commences and discontinues work;

(*c*) the size and description of the stills in such distillery;

(*d*) the storing and passing out of the spirit made in such distillery, and the contents of the passes;

(*e*) the inspection and examination of the distillery and warehouses, and of the spirit made and stored therein;

(*f*) **the furnishing of statements of the spirit, and of the stills, coppers, casks and other utensils, in the distillery.**

And for distilleries established under section 6. 9. The Chief Revenue-authority may, from time to time, make rules as to—

(*a*) the management of distilleries established under section six, and in particular as to the conditions on which any materials to be used in making spirit may be brought into such distillery;

(*b*) the conditions on which spirit may be made in such distilleries; and

(*c*) the storing and passing out of the spirit so made, and the contents of the passes.

Sanction to rules under sections 8 and 9. 10. Except in the territories respectively administered by the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg and Ajmer and Merwára, the sanction of the Local Government is required to validate rules under sections eight and nine.

Production of intoxicating drugs. 11. In British Burma, the cultivation of hemp and the preparation of intoxicating drugs therefrom are prohibited except under, and in accordance with, a license granted by such officer as the Chief Commissioner may from time to time appoint in this behalf.

In the other territories to which this Act extends, the Chief Revenue-authority may, from time to time, make such rules to restrict and regulate the

cultivation of hemp and the preparation of intoxicating drugs therefrom as it may deem necessary to secure the duty leviable in respect of those drugs.

CHAPTER III.

SALE OF SPIRIT, FERMENTED LIQUOR AND INTOXICATING DRUGS.

12. No spirit, fermented liquor or intoxicating drug shall be sold except under, and in accordance with the terms of, a license granted under the provisions hereinafter contained.

Spirit, fermented liquor and drugs not to be sold without license.

Proviso. Provided as follows—

(*a*) nothing in this section applies to the sale of any foreign spirit or foreign fermented liquor legally procured by any person for his private use and sold by him or by auction on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease;

(*b*) any officer empowered in this behalf by the Chief Revenue-authority may grant to travelling merchants, subject to such rules and restrictions as such authority may from time to time prescribe, a general license authorizing them to sell foreign spirit and foreign fermented liquor wholesale in any district which they may visit in the course of their travels, without taking out a fresh license for that district;

(*c*) any person making or producing country spirit or country fermented liquor, in accordance with the provisions of this Act, may, subject to any rules from time to time made by the Local Government in this behalf, sell such spirit or liquor to any person licensed under this Act as a retail vendor of such spirit or liquor;

(*d*) any cultivator of the hemp plant may sell any intoxicating drug prepared from his plants to any person licensed under this Act to sell the same, or to any person authorized to purchase the same by the Collector's order in writing.

13. Subject to the rules made by the Chief Controlling Revenue-authority under the power hereinafter conferred, the Collector may grant licenses for the sale of foreign spirit and foreign fermented liquor, wholesale or retail, and for the retail sale of country spirit or country fermented liquor, and (except in British Burma) of intoxicating drugs, within his district or any part thereof or at any place therein.

Licenses how granted.

Licenses for the sale of country spirit and country fermented liquor and intoxicating drugs, wholesale, and licenses for the sale, in British Burma, of intoxicating drugs, retail, shall be granted only by such officer as the Local Government from time to time appoints in this behalf.

Any license granted under this section may be cancelled by the Collector for any cause specified therein.

Power to cancel license for cause specified therein.

14. Whenever the Collector considers that the license of a vendor of country spirit, country fermented liquor or intoxicating drugs should be cancelled for any cause other than those specified in such license, he shall remit a sum equal to the amount of the license-fee for fifteen days, and shall either give fifteen days' previous notice of his intention to cancel the license, or shall, in addition to remitting such sum as aforesaid, make such compensation for default of notice as the Commissioner of Revenue or Chief Revenue-authority directs.

Power to cancel license for other causes.

On the expiration of such notice or the payment of such additional compensation, the Collector may cancel the said license.

15. Any retail vendor licensed under this Act may surrender his license on the expiration of one month's previous notice given by him to the Collector of his intention to surrender the same, and on payment of such sum, not exceeding the amount of the license-fee for six months, as the Collector may fix in this behalf.

Surrender of retail license.

If the Collector is satisfied that there is a sufficient reason for surrendering a license, he may remit the sum so fixed.

16. The Collector may, with the sanction of the Chief Revenue-authority, let in farm—

Power to farm fees.

(*a*) the fees leviable in any district or part of a district on licenses for the retail sale of any description of country spirit or country fermented liquor or (except in British Burma) of intoxicating drugs:

(*b*) the right to manufacture, in any district or part of a district in which no distillery is established under section six, country spirit or country fermented liquor.

When the fees so leviable or the right to manufacture such spirit or liquor, or both, are or is let in farm, the farmer may, subject to such reservations or restrictions as the Collector, with the sanction of the Chief Revenue-authority, may from time to time make or impose, grant licenses for the retail sale, or for the manufacture, or for both, as the case may be, of such articles within the local limits of his farm, and shall file in the Collector's office a list of all the licenses granted by him in such form and on such day or days in each year as the Chief Revenue-authority may, from time to time, prescribe in this behalf.

Farmer to grant licenses.

List of licenses granted by farmer to be filed.

17. The Collector may, with the sanction of the Chief Revenue-authority, cancel any farm granted under this Act.

Farm may be cancelled.

18. If any such farm be cancelled for any cause other than a breach on the part of the farmer of the conditions of the farm, or if any reservation or restriction with respect to the grant of licenses be made or imposed within the term of the farm, the farmer shall be entitled to receive for any loss which he sustains thereby such compensation as the Chief Revenue-authority may determine.

Compensation to farmers in certain cases.

19. Every farmer under this Act may use the same means and processes for the recovery of any arrear of fees due to him from any retail vendor as may be lawfully used by the local landholders for the recovery of arrears of rent due to them from their tenants.

Recovery of arrears by farmers.

20. The Chief Revenue-authority may, from time to time, make rules to regulate the mode in which tárí shall be supplied to licensed vendors of the same, and the grant of licenses or passes to persons possessing or transporting intoxicating drugs for the supply of the licensed vendors of such drugs.

Power to regulate supply of tárí and intoxicating drugs to licensed vendors.

CHAPTER IV.

POSSESSION OF SPIRIT, FERMENTED LIQUOR AND INTOXICATING DRUGS.

21. No person shall have in his possession any quantity of any spirit or fermented liquor larger than that specified in section three, clause (*k*), in respect of such spirit or liquor, unless he is permitted to manufacture or sell the same, or he holds a pass therefor from the Collector or from some other officer empowered by the Local Government to grant such passes.

Possession of spirit, &c.

Nothing in this section extends to—

Proviso.

(*a*) any foreign spirit or foreign fermented liquor in the possession of any common carrier or warehouse-man as such, or purchased by any person for his private use and not for sale, or

(*b*) tárí intended to be used for the manufacture of gúr or molásses.

22. In British Burma no person shall have in his possession any intoxicating drugs except under, and in accordance with the terms of, a general exemption granted by the Chief Commissioner, or a license granted by such officer as the Chief Commissioner may, from time to time, appoint in this behalf.

Possession of intoxicating drugs.

In the other territories to which this Act extends, no person shall have in his possession any larger quantity of such drugs than that specified in section three, clause (*k*), in respect of such drugs, unless he is permitted to manufacture or sell the same.

CHAPTER V.

IMPORT OF SPIRIT.

23. No person shall bring into any territory to which this Act extends any spirit manufactured at any place in India beyond the limits of British India, until duty equal to the duty prescribed for such spirit under the Indian Tariff Act, 1875, section eleven, has been paid in respect thereof and a pass has been obtained therefor from such officer as the Local Government may, from time to time, appoint in this behalf.

Spirit from foreign territory subject to duty.

CHAPTER VI.

OFFICERS AND THEIR POWERS.

24. The Collector may appoint persons, by name or by virtue of their office, to be officers for the collection of the excise-revenue and for the prevention of offences against this Act; and the officers so appointed shall, in addition to their ordinary designations (if any), be styled Excise-officers.

Collectors may appoint Excise-officers.

25. The Collector may recover any amount due to the Government under this Act or the rules made hereunder, by distress and sale of the moveable property of the person from whom such amount is due or of his surety, or by any other process for the time being in force for the recovery of arrears of land-revenue due from landholders or from farmers of land or their sureties.

Recovery of arrears of fees.

26. Any Excise-officer may enter and inspect at any time by day or by night the shop or premises in which any manufacturer or vendor licensed under this Act carries on the manufacture of country spirit, or the sale of country spirit, country fermented liquor or intoxicating drugs.

Power of Excise-officers to inspect shops.

27. Any Excise-officer may stop and detain any person carrying any spirit, fermented liquor or intoxicating drug liable to confiscation under this Act;

To arrest persons carrying spirit, &c., liable to confiscation.

and may seize such spirit, liquor or drug, together with any vessels, packages or coverings in which it is contained, and any animals and conveyances used in carrying it;

and may also arrest the person in whose possession such spirit, liquor or drug is found.

28. Any Excise-officer in the receipt of a monthly salary of not less than ten rupees may arrest any person having in his possession any article liable to confiscation under this Act, or engaged in the unlawful sale of any spirit, fermented liquor or intoxicating drug, and may seize such article, spirit, liquor or drug.

To arrest persons in possession of article liable to confiscation, and to seize article.

29. Whenever any Excise-officer in receipt of such monthly salary as aforesaid has reason to believe, from information given by any person (which information shall be taken down in writing), that in any place spirit is unlawfully manufactured, or any article liable to confiscation under this Act is kept or concealed,

To search on information of illicit manufacture or possession.

such officer may, after sunrise and before sunset (but always in the presence of an officer of police in the receipt of a monthly salary of not less than ten rupees), enter into such place,

and in case of resistance may break open any door and force and remove any other obstacle to such entry, and may seize and carry away such spirit or article,

and may also arrest the occupier of the place, with all other persons concerned in the manufacture of such spirit or in the keeping and concealing of such article.

30. The Collector may issue his warrant for the arrest of any person whom he has reason to believe, either from information in writing, or from the proceedings in any other case under this Act or any other law, to be engaged in the unlawful sale of spirit or fermented liquor or intoxicating drugs, or to have in his possession any article liable to confiscation under this Act.

Collector may issue warrant of arrest in certain cases.

31. The Collector may issue his warrant for the search of any place in which he has reason to believe,

Collector may issue search-warrant.

either from information in writing, or from the proceedings in any other case under this Act or any other law, that spirit is unlawfully manufactured, or that any spirit, fermented liquor or intoxicating drug liable to confiscation under this Act is kept or concealed.

Such warrant may be executed by any Excise-officer in the receipt of a monthly salary of not less than ten rupees, at the time and in the manner prescribed in section twenty-nine.

Special warrant authorizing search at night.

Whenever the Collector thinks that the search should be made after sunset and before sunrise on any particular day, he shall issue a warrant specially authorizing the search to be so made. Such warrant may be executed by any Excise-officer as aforesaid in the manner prescribed in section twenty-nine, and shall cease to be in force at sunrise on the day next following.

Excise-officer to report arrest, &c.;

32. Whenever an Excise-officer arrests any person,

or seizes any article liable to confiscation under this Act,

or enters any place for the purpose of searching for any such article,

he shall, within twenty-four hours thereafter, make a full report of all the particulars of such arrest, seizure or search, to his official superior, and, unless acting under the warrant of the Collector, shall take the person arrested, or the article seized, with all convenient despatch to the Magistrate for trial or adjudication.

and to take person arrested to Magistrate.

33. Whenever any person is arrested or any article is seized under the warrant of a Collector issued under this Act, the officer making such arrest or seizure shall, within twenty-four hours thereafter, take the person arrested or the article seized, to the Collector, and the Collector, after such enquiry as he thinks necessary, shall send such person or article to the nearest Magistrate, or shall order the immediate discharge of such person or the release of such article.

Procedure after arrest or seizure.

34. All Police-officers are required to aid the Excise-officers in the due execution of this Act, upon request made by such officers.

Police to aid Excise-officers.

CHAPTER VII.

PENALTIES.

35. Whoever in contravention of section five constructs, works or possesses a distillery, still or brewery, or makes fermented liquor, shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both;

For illegally manufacturing spirit or liquor.

and all spirit and liquor made in contravention of section five, and all materials and implements collected for the purpose of such manufacture, shall be liable to confiscation.

36. Any person who—

(*a*) without a special pass from the Collector, introduces, into the limits fixed for the consumption of spirit made at a distillery established under section six, any country spirit manufactured at another place, or

For illegally introducing country spirit.

(*b*) in contravention of section seven, or of any rule made under section eight or section nine, removes any spirit from a distillery, or

For illegally removing spirit.

(*c*) in contravention of section twenty-three, brings any spirit into any territory to which this Act extends,

For illegally importing spirit.

shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both;

and the spirit, together with the vessels containing the same, and any animals and conveyances used in carrying it, shall be liable to confiscation.

37. Any person who, except in cases herein otherwise provided for, wilfully contravenes any rule made under section eight or section nine shall be punished with fine not exceeding one hundred rupees.

For contravening rules prescribed by Chief Revenue-authority.

38. Any person who, in contravention of section eleven or of any rule made thereunder, cultivates hemp or prepares any intoxicating drug, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

For illegally cultivating hemp and preparing drugs.

39. Any person who, in contravention of section twelve, sells any spirit, fermented liquor or intoxicating drug, shall be punished with imprisonment for a term which may extend to four months, or with a fine which may extend to one thousand rupees, or with both.

For illicit sale of spirit, &c.

40. Any person licensed to sell retail spirit, or fermented liquor, or intoxicating drugs, who permits drunkenness, riot or gaming in his shop, or permits persons of notoriously bad character to meet or remain therein, or receives any wearing apparel or other effects in barter for spirit, fermented liquor or intoxicating drugs, shall be punished with fine which may extend to two hundred rupees.

For permitting drunkenness, &c., in shop.

41. Any person who possesses any spirit, liquor or drug, in contravention of section twenty-one or section twenty-two, shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both;

Illegal possession of spirit, liquor or drug.

and the spirit, liquor or drug, together with any vessels, packages and coverings in which it is contained, and any animals and conveyances used in carrying it, shall be liable to confiscation.

42. Any person holding a license under this Act and refusing to produce the same on the demand of any Excise-officer, and any person who breaks any rule made under this Act or any condition of a license granted under this Act, for the breach of which rule or condition no other penalty is hereby provided, shall be punished with fine which may extend to fifty rupees.

For refusal to produce license and for breach of rules and conditions.

43. Any owner or occupier of land, and any agent of any such owner or occupier, who authorizes or connives at the illegal manufacture of spirit or the sale of spirit or fermented

For conniving at illicit manufacture or sale of spirit, &c.

liquor or intoxicating drugs, shall for every such offence be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both.

And any person invested with local jurisdiction who authorizes or connives at the illegal sale of any spirit, fermented liquor or intoxicating drug within the local limits of such jurisdiction shall be punished with fine which may extend to five hundred rupees.

44. Any Police-officer who, without lawful excuse, neglects or refuses to aid an Excise-officer as required by section thirty-four, and any officer in charge of a Police station who, on application made by an Excise-officer desiring to act under section twenty-nine, fails to attend a search himself, or to depute a subordinate officer of the required rank, shall be punished with fine which may extend to five hundred rupees.

For Police neglecting to aid Excise-officers.

45. Any Excise-officer who—

(*a*) without reasonable grounds of suspicion searches or causes to be searched any place, or

For vexatious search or seizure.

(*b*) vexatiously and unnecessarily seizes the moveable property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act, or

(*c*) vexatiously and unnecessarily arrests any person, or

(*d*) commits any other excess not required for the execution of his duty,

shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

46. Any Excise-officer who, in contravention of section thirty-two or section thirty-three, neglects to report the particulars of an arrest, seizure or search, or delays taking to the Magistrate or Collector, as the case may be, any person arrested or any article seized under this Act, shall be punished with fine which may extend to two hundred rupees.

For delay in reporting arrest, &c., or in taking person arrested to Magistrate.

47. No complaint of an offence under any one of the following sections, namely, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty-one, forty-two and forty-three, shall be received unless it is made by the Collector or by an Excise-officer; and no complaint of any offence under this Act shall be received unless it is made within the six months next after the commission of such offence.

Prosecutions restricted.

48. Every person imprisoned for an offence under section thirty-seven or section forty-two shall be confined in the civil jail, and every person imprisoned for an offence under any other section shall be confined in the criminal jail.

Confinement in what jail.

49. Whoever attempts to commit any offence punishable under this Act or abets within the meaning of the Indian Penal Code the commission of any such offence shall be punished with the punishment provided for such offence.

Attempts and abetment.

50. Any Magistrate before whom any person is convicted of any offence under sections thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty-one or forty-three may award to any person who has contributed in any way to such conviction the whole or any portion of any fine imposed upon the offender and paid by him or realized from his property.

Disposal of fines, &c., as rewards.

51. Any article liable to confiscation under this Act may, on the application of an Excise-officer, be confiscated by the order of any Magistrate within the local limits of whose jurisdiction it is found.

Magistrate to pass order of confiscation.

CHAPTER VIII.

MILITARY CANTONMENTS.

52. Within the limits of any military cantonment, and within such distance from those limits as the Local Government in any case prescribes, no licenses for the manufacture of spirit, or for the sale of spirit or fermented liquor, shall be granted, nor shall the fees leviable on licenses for the retail sale of such spirit or liquor, or the right to manufacture such spirit or liquor be let in farm, unless with the knowledge and consent of the Commanding Officer;

Manufacture and sale of spirits, &c., in military cantonments.

and upon his requisition any such license which has been granted, either by the Collector or by a farmer, within such distance or limits shall be immediately cancelled.

53. In all other respects the provisions of this Act shall have effect within such limits or distance: Provided that whenever any arrest or search under this Act is to be made within the limits of any cantonment, the Collector or other officer authorized to make such arrest or search shall, whenever it may be practicable, give previous notice to the Commanding Officer, and in all other cases shall report the arrest or search to such Commanding Officer with as little delay as possible.

Mode of making arrest or search in military cantonments.

CHAPTER IX.

MISCELLANEOUS.

54. The Collector shall in all proceedings under this Act be subject to the control of the Commissioner of Revenue, and all orders passed by a Collector under this Act shall be appealable to such Commissioner in manner provided by the rules for the time being in force relating to appeals from the orders of Collectors.

Collector subject to control of Commissioner.

The Chief Revenue-authority may revise any order passed by a Collector under this Act or by a Commissioner under this section.

55. The Chief Controlling Revenue-authority may, from time to time, make rules consistent with this Act—

Additional power to make rules.

(*a*) as to the period for which any license or farm under this Act shall be granted;

(*b*) as to the fee payable for any such license or farm, and the time or times at which it shall be payable;

(*c*) as to the security to be given by any licensee or farmer under this Act;

(*d*) as to the form of any license or farming lease and of the counterpart thereof (if any) to be taken from such licensee or farmer, and the conditions which may be inserted therein;

(*e*) as to the disposal of things confiscated under this Act;

(*f*) as to the duties of Excise-officers; and

(*g*) to provide generally for carrying out the provisions of this Act.

Power to exempt articles and persons.

56. The Local Government may from time to time, by notification in the official Gazette, exempt within any specified local area any specified articles or any specified class of persons from all or any of the foregoing provisions of this Act, and may, by like notification, cancel any such exemption.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th October, 1881, and is hereby promulgated for general information:—

ACT No. XXIII OF 1881.

An Act to amend the Dekkhan Agriculturists' Relief Act, 1879.

Preamble.

WHEREAS it is expedient to amend, in manner hereinafter appearing, the Dekkhan Agriculturists' Relief Act, 1879; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Dekkhan Agriculturists' Relief Act, 1881"; and it shall come into force at once.

"Section."

2. In this Act "section" means a section of the Dekkhan Agriculturists' Relief Act, 1879.

Amendment of section 1.

3. In section one, before the word "Sections," the words "This section and" shall be, and be deemed to have always been, inserted.

Amendment of section 2, clause (2).

4. For section two, clause (2), the following shall be substituted:—

'Agriculturist.'

"'Agriculturist' means a person who, when or after incurring any liability the subject of any proceeding under this Act, by himself, his servants or tenants earned or earns his livelihood, wholly or partially, by agriculture carried on within the limits of the said districts.

"A cultivator who has temporarily ceased to earn his livelihood in manner aforesaid, without any intention of changing his status as such, does not thereby cease to be an agriculturist within this definition.

"An assignee of Government assessment or a mortgagee is not, as such, an agriculturist within this definition.

"An agriculturist shall be deemed to 'reside' where he earns his livelihood in manner aforesaid."

Amendment of sections 8 and 12.

5. In section three, clause (*y*), the words "not being merely a surety for the principal debtor," and in section twelve the words "not being merely a surety of the principal debtor," shall be omitted.

Amendment of section 19.

6. In section nineteen, first clause, for the words "there is no other claim against him," the words "the other debts (if any) due by him do not, taken together with such sum, amount to fifty rupees" shall be substituted; and to the same clause the words "of such sum" shall be added.

Addition to section 38.

7. To section 38, the following shall be added:—

"The expression 'officer of police' in this section shall not be deemed to include a police patel appointed under Bombay Act No. VIII of 1867 (*for the Regulation of the Village Police in the Presidency of Bombay*)."

Amendment of section 44.

8. In section forty-four, for the word "place," the word "táluqa" shall be substituted.

Addition to section 47.

9. To section forty-seven the following shall be added, namely:—

"*Explanation.*—The expression 'civil Court' in this section does not include a Mámlatdár's Court under Bombay Act No. III of 1876 (*to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts*)."

New section substituted for section 48.

10. For section forty-eight the following section shall be substituted:—

Allowance to be made in period of limitation.

"48. In computing the period of limitation prescribed for any such suit or application the time intervening between the application made by the plaintiff under section thirty-nine and the grant of the certificate under section forty-six shall be excluded.

Limitation in certain cases.

"Any such application which after the first day of November, 1879, has been rejected, and which, if such time had been excluded in computing the period of limitation prescribed for such application, would have been entertained, shall be entertained if made within two months from the twenty-sixth day of October, 1881.

New section substituted for section 51.

11. For section fifty-one the following section shall be substituted:—

District Judge may withdraw case from Conciliator or Subordinate Judge,

"51. The District Judge may—

"(*a*) transfer any application pending before a Conciliator to the file of any other Conciliator;

"(*b*) transfer to his own file any suit or other matter pending before the Court of any Subordinate Judge under Chapter II or Chapter IV of this Act, and may dispose of the same as if he were a Subordinate Judge; or

"(*c*) stay the proceedings in any such suit or matter, and sit together with such Judge as a Bench to dispose of such suit or matter in accordance with the provisions of this Act.

or sit with Subordinate Judge as a Bench for trial of any case.

"If the members of any Bench sitting under this section differ in opinion, the opinion of the District Judge shall prevail."

Addition to section 56.

12. To section fifty-six the following shall be added, namely :—

"or apply to any instrument which is executed by an agriculturist merely as a surety."

New section substituted for section 57.

13. For section fifty-seven the following section shall be substituted :—

"57. When any persons intend to execute any instrument to which section fifty-six applies, all such persons shall appear before the Village Registrar appointed for the area in which the agriculturist, or when there are several agriculturists intending to execute the instrument, any one of such agriculturists, resides, and such Registrar, after satisfying himself in such manner as he deems fit as to the identity of the intending executants and receiving the fee (if any) prescribed by the local Government in this behalf, and the stamp (if any) which may be required by law, shall write the instrument, or cause the same to be written under his superintendence; and after reading the same aloud, or causing it to be so read, in the hearing of the intending executants, shall require them to execute it in his presence.

Such instruments to be written by, or under the superintendence of, a Village Registrar and executed in his presence.

"Every instrument so written and executed shall at the time of execution be attested by the Village Registrar; and also, if any of the executants thereof is unable to read such instrument, by two respectable witnesses.

Attestation of such instruments.

"For the purposes of this section every executant of any such instrument shall appear in person before the Village Registrar; but every other party thereto may appear either in person or by any agent, being his relative, servant or dependent, whom he has duly furnished with a power-of-attorney authorizing him to appear and act on his behalf."

Amendment of section 58.

14. In section fifty-eight, for the words "parties to any instrument have executed it," the words "intending executants have executed any instrument" shall be substituted.

New section substituted for section 68.

15. For section sixty-eight the following section shall be substituted :—

"68. No pleader, vakíl or mukhtár, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any case before a Conciliator or a Village-Munsif the subject-matter whereof does not exceed in amount or value one hundred rupees:

Pleaders, &c., excluded in certain cases.

"Provided that any party to any such case may be permitted, on reasonable cause being shown to the satisfaction of the Conciliator or Village-Munsif, to employ any relative, servant or dependent who is not, and has not previously been, a pleader, vakíl or mukhtár, or an advocate or attorney of a High Court, to appear either conjointly with, or in lieu of, such party.

"When a relative, servant or dependent appears in lieu of a party, he shall be furnished by him with a power-of-attorney defining the extent to which he is empowered to act."

Repeal of section 71.

16. Section seventy-one is hereby repealed.

New section substituted for section 72.

17. For section seventy-two the following section shall be substituted :—

"72. In any suit under this Act for the recovery of money from a person, not being merely a surety for the principal debtor, who at the time when the cause of action arose was an agriculturist, the following periods of limitation shall be deemed to be substituted for those prescribed in the second column of the second schedule annexed to the Indian Limitation Act, 1877 (that is to say) :—

Limitation.

"(*a*) When such suit is founded on a written instrument registered under this Act or any law in force at the date of the execution of such instrument,—twelve years;

"(*b*) in any other case,—six years:

"Provided that nothing herein contained shall revive the right to bring any suit which would have been barred by limitation if it had been instituted immediately before this Act comes into force."

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th October, 1881, and is hereby promulgated for general information :—

ACT No. XXIV OF 1881.

An Act to amend the Panjáb Laws Act, 1872.

WHEREAS, in order to provide for the establishment of a system of municipal-watchmen in certain municipalities in the territories administered by the Lieutenant-Governor of the Panjáb, it is expedient to amend the Panjáb Laws Act, 1872; It is hereby enacted as follows :—

Preamble.

1. This Act may be called "The Panjáb Laws Amendment Act, 1881," and shall come into force at once.

Short title.

Commencement.

2. For sections 39A and 39B of the said Act, the following sections shall be substituted :—

Substitution of new sections for sections 39A and 39B.

"39A. The Local Government may establish a system of village-watchmen or municipal-watchmen in any part of the territories under its administration, and in furtherance of this object may, from time to time, make rules to provide for the following matters :—

Power to establish system of village-watchmen and municipal-watchmen, and to make rules.

(*a*) the definition of the limits of watchmen's beats;

(*b*) the determination of the several grades of watchmen, and the number of each grade to be appointed to each beat;

(*c*) the appointment, suspension, dismissal and resignation of watchmen of each grade;

(*d*) the equipment and discipline of, and the control and supervision over, such watchmen;

(*e*) the conferring upon them, and the exercise by them, of any powers, and the enjoyment by them of any protection or privilege, which may be exercised and enjoyed by a police-officer under any law for the time being in force;

(*f*) the performance by them of such duties relating to police, sanitation or statistics, or for the benefit of the village-communities or municipalities within their respective beats, as the Local Government thinks fit;

(*g*) the exercise of authority over, and the rendering of aid to, such watchmen by headmen of the villages or members of the Municipal Committees of the towns comprised in their respective beats;

(*h*) the performance, by the headmen of villages comprised in the beat of any watchman, of any of the duties of a village-watchman in aid of, or substitution for, such watchman;

(*i*) the exercise, by such village-headmen for the purposes referred to in clauses (*g*) and (*h*), or by members of Municipal Committees for the purposes referred to in clause (*g*) of this section, of any of the powers, and the enjoyment by such headmen or members of any privilege or protection, of a village-watchman or a municipal-watchman as the case may be;

(*j*) the determination of the rate at which, and the mode in which, watchmen shall be paid, and, in the case of village-watchmen, of the mode in which their pay, the expenses of their equipment, and other charges connected with the village-watchman system shall be provided for, whether out of cesses or funds already leviable or available in the villages comprised in the beat, or by a special tax in money or kind to be imposed on any class of persons residing or owning property in, or resorting to, such villages, or partly in one of these ways and partly in the other;

(*k*) the collection with or without the aid of the village-headmen, and by any process available for the realization of the land-revenue, of any tax imposed under clause (*j*) of this section, and the application of, and the mode of accounting for, the same; and generally for

(*l*) the efficient working of the system of village-watchmen or municipal-watchmen:

"Provided—

1*st*,—that the rules to be made regarding the appointment of village-watchmen shall allow to the headmen of the villages comprised in the beat to which such watchman is to be appointed, a power of nomination to be exercised in such manner, and subject to such reasonable conditions, as may be prescribed by such rules;

2ndly,—that the rules to be made under clause (*j*) of this section with regard to village-watchmen shall include provisions for recording and securing due consideration of the views and opinions on the matters therein referred to of the headmen of the villages comprised in each beat.

"39B. Every person is bound to render to a village-watchman, or municipal-watchman, or village-headman discharging the duties of a police-officer under the rules made hereunder, all the assistance which he is bound to render to a police-officer.

Obligation to assist watchmen and headmen.

"Any person who obstructs such watchman or headman in the discharge of such duties may be arrested without warrant by a police-officer or by any watchman or village-headman empowered in this behalf by the Local Government."

Person obstructing watchman or headman may be arrested without warrant.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 27th October, 1881, and is hereby promulgated for general information:—

ACT No. XXV OF 1881.

An Act to amend the law in force in the Mahál of Bánki.

WHEREAS it has been determined to annex the territory comprised in the mahál of Bánki to the district of Katak:

Preamble.

And whereas the said territory forms portion of a scheduled district under the Scheduled Districts Act, 1874:

And whereas it is expedient that the law in force in the said territory should, on such annexation, be the same as the law in force in the district of Katak, and that the said territory should cease to be a portion of a scheduled district:

It is hereby enacted as follows:—

1. This Act may be called "The Bánki Laws Act, 1881."

Short title.

2. All enactments which shall on the first day of April, 1882, be in force in the district of Katak and not in the said territory shall be deemed to come into force in the said territory on that day:

Laws of Katak to apply.

And all enactments which shall on that day be in force in the said territory and not in the district of Katak shall be deemed to be repealed on and from that day in the said territory.

Other laws repealed.

3. All proceedings commenced before any authority in the said territory before the said first day of April, 1882, and still pending on the said day, shall be disposed of by such authority as the Local Government may direct; and, save as aforesaid, shall be carried on as if this Act had not been passed.

Pending proceedings.

4. On and from the said first day of April, 1882, the said territory shall cease to be a portion of a scheduled district; and in Part III of the first schedule to the said Scheduled Districts Act, 1874, for the words "Mahál of Angúl and Bánki," the words "Mahál of Angúl" shall be substituted;

Territory to cease to be a scheduled district.

And in the following Bengal Regulations, namely, Regulation XII of 1805, section thirty-six, Regulation XIII of 1805, section thirteen, and Regulation XI of 1816, section two, the words "Ditto Bánki" shall be repealed.

Amendment of certain Bengal Regulations.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY NOVEMBER 12, 1881.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th October, 1881, and is hereby promulgated for general information:—

ACT No. XXII OF 1881.

THE EXCISE ACT, 1881.

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An Act to amend the law relating to the Excise-revenue in Northern India, British Burma and Coorg.

WHEREAS it is expedient to amend the law in force in Northern India, British Burma and Coorg relating to the production, sale, possession and import of spirit, fermented liquors and intoxicating drugs, and the collection of the revenue derived therefrom; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Excise Act, 1881": Short title.

It extends to the territories administered respectively by the Lieutenant-Governors of the North-Western Provinces and the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Ajmer and Merwára; and Local extent.

it shall come into force on the first day of January, 1882. Commencement.

2. On and from that day the Excise Act, 1871, shall be repealed, but all rules made, powers conferred and licenses and farms granted under that Act and in force on the same day shall be deemed to have been respectively made, conferred and granted under this Act. Repeal of Act X of 1871.

3. In this Act— Interpretation-clause.

(*a*) "Chief Revenue-authority" means— "Chief Revenue-authority":

in the territories administered by the Lieutenant-Governor of the North-Western Provinces—the Board of Revenue;

in the territories administered by the Lieutenant-Governor of the Panjáb—the Financial Commissioner; and

in the territories respectively administered by the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Ajmer and Merwára—the Chief Commissioner:

(*b*) "Collector" includes any Revenue-officer in independent charge of a District and any officer appointed by the Local Government to discharge, throughout any specified local area, the functions of a Collector under this Act: "Collector":

"Commissioner of Revenue" means any officer appointed by the Local Government to discharge, throughout any specified local area, the functions of a Commissioner of Revenue under this Act: "Commissioner of Revenue":

(*c*) "Magistrate" means any Magistrate exercising powers not less than those of a Magistrate of the second class, or any Magistrate of the third class specially authorized in this behalf by the Magistrate of the District: "Magistrate":

(*d*) "Place" includes also house, boat and raft: "Place":

(*e*) "Tárí" means the sap of any kind of palm-tree. "Tárí":

(*f*) "Fermented liquor" means malt liquor, wine, pachwai and fermented tárí, and, in any provision of this Act, shall, if the Local Government, subject to the control of the Governor General in Council, so directs, include any other fermented liquor, and also tárí though it may not have perceptibly begun to ferment: "Fermented liquor":

(*g*) "Spirit" means any liquor containing alcohol obtained by distillation: "Spirit":

(*h*) The expression "intoxicating drugs" means gánja, bhang, charas, and every preparation and admixture of the same: "Intoxicating drugs":

(*i*) "Tola" means a weight of one hundred and eighty grains Troy: "Tola":

(*j*) "Ser" means a weight of eighty tolas: "Ser":

(*k*) The articles next hereinafter mentioned shall be deemed to be sold retail within the meaning of this Act when sold in quantities not exceeding those next hereinafter specified in respect of them, that is to say,— "Retail":

Foreign spirit or foreign fermented liquor, two imperial gallons or twelve reputed quart bottles;

country spirit, one ser, and in British Burma one reputed quart bottle;

country fermented liquor, four sers, and in British Burma four reputed quart bottles;

bhang, or any preparation or admixture thereof, one quarter of a ser;

gánja or charas, or any preparation or admixture thereof, five tolas:

If sold in larger quantities they shall be deemed to be sold wholesale. "Wholesale."

In any case in which doubt arises the Local Government may decide what for the purposes of this Act shall be deemed to be "country spirit," "country fermented liquor," "foreign spirit," and "foreign fermented liquor"; and such decision shall be binding on the Courts. "Country spirit": "Foreign spirit."

4. Nothing herein contained shall affect Act No. XVI of 1863 (*to make special provision for the levy of the Excise Duty payable on Spirits used exclusively in Arts and Manufactures or in Chemistry*) or the Cantonments Act, 1880. Saving of Acts XVI of 1863 and III of 1880.

CHAPTER II.

PRODUCTION OF SPIRIT, FERMENTED LIQUOR AND INTOXICATING DRUGS.

5. No person shall construct, work or possess a distillery, still or brewery, or manufacture fermented liquor, in any district except under a license granted by the Collector or by a person authorised by the Collector to grant such license, and in accordance with the conditions (if any) contained therein. Manufacture of spirit and liquor without license prohibited.

6. The Collector may, with the previous sanction of the Chief Revenue-authority, from time to time, Power to establish distilleries for country spirit.

(*a*) establish at any place within his district a distillery in which country spirit may be made, and discontinue any distillery so established;

(*b*) fix limits within his district within which no such spirit, unless made in the said distillery, shall be introduced without a pass from him.

7. No spirit shall be removed from any distillery licensed under section five or established under section six, until— Duty on spirit.

(*a*) the duty payable in respect of such spirit under the Indian Tariff Act, 1875, section eleven, has been paid, or

(*b*) a bond for such duty has been executed, or

(*c*) a duty in respect of the materials used in making such spirit has been levied at such rates and in such manner as the Local Government, with the previous sanction of the Governor General in Council, may from time to time direct.

8. The Chief Revenue-authority may, from time to time, make rules as to— Power to make rules as to distilleries and breweries licensed under section 5.

(*a*) the granting of licenses for distilleries, stills and breweries under section five;

(*b*) the notices to be given by the proprietor of a licensed distillery when he commences and discontinues work;

(*c*) the size and description of the stills in such distillery;

(*d*) the storing and passing out of the spirit made in such distillery, and the contents of the passes;

(*e*) the inspection and examination of the distillery and warehouses, and of the spirit made and stored therein;

(*f*) the furnishing of statements of the spirit, and of the stills, coppers, casks and other utensils, in the distillery.

9. The Chief Revenue-authority may, from time to time, make rules as to— And for distilleries established under section 6.

(*a*) the management of distilleries established under section six, and in particular as to the conditions on which any materials to be used in making spirit may be brought into such distillery;

(*b*) the conditions on which spirit may be made in such distilleries; and

(*c*) the storing and passing out of the spirit so made, and the contents of the passes.

10. Except in the territories respectively administered by the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg and Ajmer and Merwára, the sanction of the Local Government is required to validate rules under sections eight and nine. Sanction to rules under sections 8 and 9.

11. In British Burma, the cultivation of hemp and the preparation of intoxicating drugs therefrom are prohibited except under, and in accordance with, a license granted by such officer as the Chief Commissioner may from time to time appoint in this behalf. Production of intoxicating drugs.

In the other territories to which this Act extends, the Chief Revenue-authority may, from time to time, make such rules to restrict and regulate the

cultivation of hemp and the preparation of intoxicating drugs therefrom as it may deem necessary to secure the duty leviable in respect of those drugs.

CHAPTER III.

SALE OF SPIRIT, FERMENTED LIQUOR AND INTOXICATING DRUGS.

Spirit, fermented liquor and drugs not to be sold without license.

12. No spirit, fermented liquor or intoxicating drug shall be sold except under, and in accordance with the terms of, a license granted under the provisions hereinafter contained.

Proviso.

Provided as follows—

(*a*) nothing in this section applies to the sale of any foreign spirit or foreign fermented liquor legally procured by any person for his private use and sold by him or by auction on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease;

(*b*) any officer empowered in this behalf by the Chief Revenue-authority may grant to travelling merchants, subject to such rules and restrictions as such authority may from time to time prescribe, a general license authorizing them to sell foreign spirit and foreign fermented liquor wholesale in any district which they may visit in the course of their travels, without taking out a fresh license for that district;

(*c*) any person making or producing country spirit or country fermented liquor, in accordance with the provisions of this Act, may, subject to any rules from time to time made by the Local Government in this behalf, sell such spirit or liquor to any person licensed under this Act as a retail vendor of such spirit or liquor;

(*d*) any cultivator of the hemp plant may sell any intoxicating drug prepared from his plants to any person licensed under this Act to sell the same, or to any person authorized to purchase the same by the Collector's order in writing.

Licenses how granted.

13. Subject to the rules made by the Chief Controlling Revenue-authority under the power hereinafter conferred, the Collector may grant licenses for the sale of foreign spirit and foreign fermented liquor, wholesale or retail, and for the retail sale of country spirit or country fermented liquor, and (except in British Burma) of intoxicating drugs, within his district or any part thereof or at any place therein.

Licenses for the sale of country spirit and country fermented liquor and intoxicating drugs, wholesale, and licenses for the sale, in British Burma, of intoxicating drugs, retail, shall be granted only by such officer as the Local Government from time to time appoints in this behalf.

Any license granted under this section may be cancelled by the Collector for any cause specified therein.

Power to cancel license for cause specified therein.

Power to cancel license for other causes.

14. Whenever the Collector considers that the license of a vendor of country spirit, country fermented liquor or intoxicating drugs should be cancelled for any cause other than those specified in such license, he shall remit a sum equal to the amount of the license-fee for fifteen days, and shall either give fifteen days' previous notice of his intention to cancel the license, or shall, in addition to remitting such sum as aforesaid, make such compensation for default of notice as the Commissioner of Revenue or Chief Revenue-authority directs.

On the expiration of such notice or the payment of such additional compensation, the Collector may cancel the said license.

Surrender of retail license.

15. Any retail vendor licensed under this Act may surrender his license on the expiration of one month's previous notice given by him to the Collector of his intention to surrender the same, and on payment of such sum, not exceeding the amount of the license-fee for six months, as the Collector may fix in this behalf.

If the Collector is satisfied that there is a sufficient reason for surrendering a license, he may remit the sum so fixed.

Power to farm fees.

16. The Collector may, with the sanction of the Chief Revenue-authority, let in farm—

(*a*) the fees leviable in any district or part of a district on licenses for the retail sale of any description of country spirit or country fermented liquor or (except in British Burma) of intoxicating drugs:

(*b*) the right to manufacture, in any district or part of a district in which no distillery is established under section six, country spirit or country fermented liquor.

Farmer to grant licenses.

When the fees so leviable or the right to manufacture such spirit or liquor, or both, are or is let in farm, the farmer may, subject to such reservations or restrictions as the Collector, with the sanction of the Chief Revenue-authority, may from time to time make or impose, grant licenses for the retail sale, or for the manufacture, or for both, as the case may be, of such articles within the local limits of his farm, and shall file in the Collector's office a list of all the licenses granted by him in such form and on such day or days in each year as the Chief Revenue-authority may, from time to time, prescribe in this behalf.

List of licenses granted by farmer to be filed.

Farm may be cancelled.

17. The Collector may, with the sanction of the Chief Revenue-authority, cancel any farm granted under this Act.

Compensation to farmers in certain cases.

18. If any such farm be cancelled for any cause other than a breach on the part of the farmer of the conditions of the farm, or if any reservation or restriction with respect to the grant of licenses be made or imposed within the term of the farm, the farmer shall be entitled to receive for any loss which he sustains thereby such compensation as the Chief Revenue-authority may determine.

Recovery of arrears by farmers.

19. Every farmer under this Act may use the same means and processes for the recovery of any arrear of fees due to him from any retail vendor as may be lawfully used by the local landholders for the recovery of arrears of rent due to them from their tenants.

Power to regulate supply of tárí and intoxicating drugs to licensed vendors.

20. The Chief Revenue-authority may, from time to time, make rules to regulate the mode in which tárí shall be supplied to licensed vendors of the same, and the grant of licenses or passes to persons possessing or transporting intoxicating drugs for the supply of the licensed vendors of such drugs.

CHAPTER IV.

POSSESSION OF SPIRIT, FERMENTED LIQUOR AND INTOXICATING DRUGS.

Possession of spirit, &c.

21. No person shall have in his possession any quantity of any spirit or fermented liquor larger than that specified in section three, clause (*k*), in respect of such spirit or liquor, unless he is permitted to manufacture or sell the same, or he holds a pass therefor from the Collector or from some other officer empowered by the Local Government to grant such passes.

Nothing in this section extends to—

Proviso.

(*a*) any foreign spirit or foreign fermented liquor in the possession of any common carrier or warehouse-man as such, or purchased by any person for his private use and not for sale, or

(*b*) tárí intended to be used for the manufacture of gúr or molasses.

Possession of intoxicating drugs.

22. In British Burma no person shall have in his possession any intoxicating drugs except under, and in accordance with the terms of, a general exemption granted by the Chief Commissioner, or a license granted by such officer as the Chief Commissioner may, from time to time, appoint in this behalf.

In the other territories to which this Act extends, no person shall have in his possession any larger quantity of such drugs than that specified in section three, clause (*k*), in respect of such drugs, unless he is permitted to manufacture or sell the same.

CHAPTER V.

IMPORT OF SPIRIT.

Spirit from foreign territory subject to duty.

23. No person shall bring into any territory to which this Act extends any spirit manufactured at any place in India beyond the limits of British India, until duty equal to the duty prescribed for such spirit under the Indian Tariff Act, 1875, section eleven, has been paid in respect thereof and a pass has been obtained therefor from such officer as the Local Government may, from time to time, appoint in this behalf.

CHAPTER VI.

OFFICERS AND THEIR POWERS.

Collectors may appoint Excise-officers.

24. The Collector may appoint persons, by name or by virtue of their office, to be officers for the collection of the excise-revenue and for the prevention of offences against this Act; and the officers so appointed shall, in addition to their ordinary designations (if any), be styled Excise-officers.

Recovery of arrears of fees.

25. The Collector may recover any amount due to the Government under this Act or the rules made hereunder, by distress and sale of the moveable property of the person from whom such amount is due or of his surety, or by any other process for the time being in force for the recovery of arrears of land-revenue due from landholders or from farmers of land or their sureties.

Power of Excise-officers to inspect shops.

26. Any Excise-officer may enter and inspect at any time by day or by night the shop or premises in which any manufacturer or vendor licensed under this Act carries on the manufacture of country spirit, or the sale of country spirit, country fermented liquor or intoxicating drugs.

To arrest persons carrying spirit, &c., liable to confiscation.

27. Any Excise-officer may stop and detain any person carrying any spirit, fermented liquor or intoxicating drug liable to confiscation under this Act;

and may seize such spirit, liquor or drug, together with any vessels, packages or coverings in which it is contained, and any animals and conveyances used in carrying it;

and may also arrest the person in whose possession such spirit, liquor or drug is found.

To arrest persons in possession of article liable to confiscation, and to seize article.

28. Any Excise-officer in the receipt of a monthly salary of not less than ten rupees may arrest any person having in his possession any article liable to confiscation under this Act, or engaged in the unlawful sale of any spirit, fermented liquor or intoxicating drug, and may seize such article, spirit, liquor or drug.

To search on information of illicit manufacture or possession.

29. Whenever any Excise-officer in receipt of such monthly salary as aforesaid has reason to believe, from information given by any person (which information shall be taken down in writing), that in any place spirit is unlawfully manufactured, or any article liable to confiscation under this Act is kept or concealed,

such officer may, after sunrise and before sunset (but always in the presence of an officer of police in the receipt of a monthly salary of not less than ten rupees), enter into such place,

and in case of resistance may break open any door and force and remove any other obstacle to such entry, and may seize and carry away such spirit or article,

and may also arrest the occupier of the place, with all other persons concerned in the manufacture of such spirit or in the keeping and concealing of such article.

Collector may issue warrant of arrest in certain cases.

30. The Collector may issue his warrant for the arrest of any person whom he has reason to believe, either from information in writing, or from the proceedings in any other case under this Act or any other law, to be engaged in the unlawful sale of spirit or fermented liquor or intoxicating drugs, or to have in his possession any article liable to confiscation under this Act.

Collector may issue search-warrant.

31. The Collector may issue his warrant for the search of any place in which he has reason to believe,

either from information in writing, or from the proceedings in any other case under this Act or any other law, that spirit is unlawfully manufactured, or that any spirit, fermented liquor or intoxicating drug liable to confiscation under this Act is kept or concealed.

Such warrant may be executed by any Excise-officer in the receipt of a monthly salary of not less than ten rupees, at the time and in the manner prescribed in section twenty-nine.

Special warrant authorizing search at night.

Whenever the Collector thinks that the search should be made after sunset and before sunrise on any particular day, he shall issue a warrant specially authorizing the search to be so made. Such warrant may be executed by any Excise-officer as aforesaid in the manner prescribed in section twenty-nine, and shall cease to be in force at sunrise on the day next following.

Excise-officer to report arrest, &c.;

32. Whenever an Excise-officer arrests any person,

or seizes any article liable to confiscation under this Act,

or enters any place for the purpose of searching for any such article,

he shall, within twenty-four hours thereafter, make a full report of all the particulars of such arrest, seizure or search, to his official superior, and, unless acting under the warrant of the Collector, shall take the person arrested, or the article seized, with all convenient despatch to the Magistrate for trial or adjudication.

and to take person arrested to Magistrate.

Procedure after arrest or seizure.

33. Whenever any person is arrested or any article is seized under the warrant of a Collector issued under this Act, the officer making such arrest or seizure shall, within twenty-four hours thereafter, take the person arrested or the article seized, to the Collector, and the Collector, after such enquiry as he thinks necessary, shall send such person or article to the nearest Magistrate, or shall order the immediate discharge of such person or the release of such article.

Police to aid Excise-officers.

34. All Police-officers are required to aid the Excise-officers in the due execution of this Act, upon request made by such officers.

CHAPTER VII.

PENALTIES.

For illegally manufacturing spirit or liquor.

35. Whoever in contravention of section five constructs, works or possesses a distillery, still or brewery, or makes fermented liquor, shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both;

and all spirit and liquor made in contravention of section five, and all materials and implements collected for the purpose of such manufacture, shall be liable to confiscation.

36. Any person who—

For illegally introducing country spirit.

(*a*) without a special pass from the Collector, introduces, into the limits fixed for the consumption of spirit made at a distillery established under section six, any country spirit manufactured at another place, or

(*b*) in contravention of section seven, or of any rule made under section eight or section nine, removes any spirit from a distillery, or

For illegally removing spirit.

(*c*) in contravention of section twenty-three, brings any spirit into any territory to which this Act extends,

For illegally importing spirit.

shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both;

and the spirit, together with the vessels containing the same, and any animals and conveyances used in carrying it, shall be liable to confiscation.

For contravening rules prescribed by Chief Revenue-authority.

37. Any person who, except in cases herein otherwise provided for, wilfully contravenes any rule made under section eight or section nine shall be punished with fine not exceeding one hundred rupees.

For illegally cultivating hemp and preparing drugs.

38. Any person who, in contravention of section eleven or of any rule made thereunder, cultivates hemp or prepares any intoxicating drug, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

For illicit sale of spirit, &c.

39. Any person who, in contravention of section twelve, sells any spirit, fermented liquor or intoxicating drug, shall be punished with imprisonment for a term which may extend to four months, or with a fine which may extend to one thousand rupees, or with both.

For permitting drunkenness, &c., in shop.

40. Any person licensed to sell retail spirit, or fermented liquor, or intoxicating drugs, who permits drunkenness, riot or gaming in his shop, or permits persons of notoriously bad character to meet or remain therein, or receives any wearing apparel or other effects in barter for spirit, fermented liquor or intoxicating drugs, shall be punished with fine which may extend to two hundred rupees.

Illegal possession of spirit, liquor or drug.

41. Any person who possesses any spirit, liquor or drug, in contravention of section twenty-one or section twenty-two, shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both;

and the spirit, liquor or drug, together with any vessels, packages and coverings in which it is contained, and any animals and conveyances used in carrying it, shall be liable to confiscation.

For refusal to produce license and for breach of rules and conditions.

42. Any person holding a license under this Act and refusing to produce the same on the demand of any Excise-officer, and any person who breaks any rule made under this Act or any condition of a license granted under this Act, for the breach of which rule or condition no other penalty is hereby provided, shall be punished with fine which may extend to fifty rupees.

For conniving at illicit manufacture or sale of spirit, &c.

43. Any owner or occupier of land, and any agent of any such owner or occupier, who authorizes or connives at the illegal manufacture of spirit or the sale of spirit or fermented liquor or intoxicating drugs, shall for every such offence be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both.

And any person invested with local jurisdiction who authorizes or connives at the illegal sale of any spirit, fermented liquor or intoxicating drug within the local limits of such jurisdiction shall be punished with fine which may extend to five hundred rupees.

For Police neglecting to aid Excise-officers.

44. Any Police-officer who, without lawful excuse, neglects or refuses to aid an Excise-officer as required by section thirty-four, and any officer in charge of a Police station who, on application made by an Excise-officer desiring to act under section twenty-nine, fails to attend a search himself, or to depute a subordinate officer of the required rank, shall be punished with fine which may extend to five hundred rupees.

45. Any Excise-officer who—

For vexatious search or seizure.

(*a*) without reasonable grounds of suspicion searches or causes to be searched any place, or

(*b*) vexatiously and unnecessarily seizes the moveable property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act, or

(*c*) vexatiously and unnecessarily arrests any person, or

(*d*) commits any other excess not required for the execution of his duty,

shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

For delay in reporting arrest, &c., or in taking person arrested to Magistrate.

46. Any Excise-officer who, in contravention of section thirty-two or section thirty-three, neglects to report the particulars of an arrest, seizure or search, or delays taking to the Magistrate or Collector, as the case may be, any person arrested or any article seized under this Act, shall be punished with fine which may extend to two hundred rupees.

Prosecutions restricted.

47. No complaint of an offence under any one of the following sections, namely, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty-one, forty-two and forty-three, shall be received unless it is made by the Collector or by an Excise-officer; and no complaint of any offence under this Act shall be received unless it is made within the six months next after the commission of such offence.

Confinement in what jail.

48. Every person imprisoned for an offence under section thirty-seven or section forty-two shall be confined in the civil jail, and every person imprisoned for an offence under any other section shall be confined in the criminal jail.

Attempts and abetment.

49. Whoever attempts to commit any offence punishable under this Act or abets within the meaning of the Indian Penal Code the commission of any such offence shall be punished with the punishment provided for such offence.

Disposal of fines, &c., as rewards.

50. Any Magistrate before whom any person is convicted of any offence under sections thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty-one or forty-three may award to any person who has contributed in any way to such conviction the whole or any portion of any fine imposed upon the offender and paid by him or realized from his property.

Magistrate to pass order of confiscation.

51. Any article liable to confiscation under this Act may, on the application of an Excise-officer, be confiscated by the order of any Magistrate within the local limits of whose jurisdiction it is found.

CHAPTER VIII.

MILITARY CANTONMENTS.

Manufacture and sale of spirits, &c., in military cantonments.

52. Within the limits of any military cantonment, and within such distance from those limits as the Local Government in any case prescribes, no licenses for the manufacture of spirit, or for the sale of spirit or fermented liquor, shall be granted, nor shall the fees leviable on licenses for the retail sale of such spirit or liquor, or the right to manufacture such spirit or liquor be let in farm, unless with the knowledge and consent of the Commanding Officer;

and upon his requisition any such license which has been granted, either by the Collector or by a farmer, within such distance or limits shall be immediately cancelled.

Mode of making arrest or search in military cantonments.

53. In all other respects the provisions of this Act shall have effect within such limits or distance: Provided that whenever any arrest or search under this Act is to be made within the limits of any cantonment, the Collector or other officer authorized to make such arrest or search shall, whenever it may be practicable, give previous notice to the Commanding Officer, and in all other cases shall report the arrest or search to such Commanding Officer with as little delay as possible.

CHAPTER IX.

MISCELLANEOUS.

Collector subject to control of Commissioner.

54. The Collector shall in all proceedings under this Act be subject to the control of the Commissioner of Revenue, and all orders passed by a Collector under this Act shall be appealable to such Commissioner in manner provided by the rules for the time being in force relating to appeals from the orders of Collectors.

The Chief Revenue-authority may revise any order passed by a Collector under this Act or by a Commissioner under this section.

Additional power to make rules.

55. The Chief Controlling Revenue-authority may, from time to time, make rules consistent with this Act—

(*a*) as to the period for which any license or farm under this Act shall be granted;

(*b*) as to the fee payable for any such license or farm, and the time or times at which it shall be payable;

(*c*) as to the security to be given by any licensee or farmer under this Act;

(*d*) as to the form of any license or farming lease and of the counterpart thereof (if any) to be taken from such licensee or farmer, and the conditions which may be inserted therein;

(*e*) as to the disposal of things confiscated under this Act;

(*f*) as to the duties of Excise-officers; and

(*g*) to provide generally for carrying out the provisions of this Act.

Power to exempt articles and persons.

56. The Local Government may from time to time, by notification in the official Gazette, exempt within any specified local area any specified articles or any specified class of persons from all or any of the foregoing provisions of this Act, and may, by like notification, cancel any such exemption.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th October, 1881, and is hereby promulgated for general information:—

ACT No. XXIII OF 1881.

An Act to amend the Dekkhan Agriculturists' Relief Act, 1879.

Preamble.

WHEREAS it is expedient to amend, in manner hereinafter appearing, the Dekkhan Agriculturists' Relief Act, 1879; It is hereby enacted as follows:—

Short title.

Commencement.

1. This Act may be called "The Dekkhan Agriculturists' Relief Act, 1881"; and it shall come into force at once.

"Section."

2. In this Act "section" means a section of the Dekkhan Agriculturists' Relief Act, 1879.

Amendment of section 1.

3. In section one, before the word "Sections," the words "This section and" shall be, and be deemed to have always been, inserted.

Amendment of section 2, clause (2).

4. For section two, clause (2), the following shall be substituted:—

'Agriculturist.'

"'Agriculturist' means a person who, when or after incurring any liability the subject of any proceeding under this Act, by himself, his servants or tenants earned or earns his livelihood, wholly or partially, by agriculture carried on within the limits of the said districts.

"A cultivator who has temporarily ceased to earn his livelihood in manner aforesaid, without any intention of changing his status as such, does not thereby cease to be an agriculturist within this definition.

"An assignee of Government assessment or a mortgagee is not, as such, an agriculturist within this definition.

"An agriculturist shall be deemed to 'reside' where he earns his livelihood in manner aforesaid."

Amendment of sections 3 and 12.

5. In section three, clause (*y*), the words "not being merely a surety for the principal debtor," and in section twelve the words "not being merely a surety of the principal debtor," shall be omitted.

Amendment of section 19.

6. In section nineteen, first clause, for the words "there is no other claim against him," the words "the other debts (if any) due by him do not, taken together with such sum, amount to fifty rupees" shall be substituted; and to the same clause the words "of such sum" shall be added.

Addition to section 38.

7. To section 38, the following shall be added:—

"The expression 'officer of police' in this section shall not be deemed to include a police patel appointed under Bombay Act No. VIII of 1867 (*for the Regulation of the Village Police in the Presidency of Bombay*)."

Amendment of section 44.

8. In section forty-four, for the word "place," the word "táluqa" shall be substituted.

Addition to section 47.

9. To section forty-seven the following shall be added, namely:—

"*Explanation.*—The expression 'civil Court' in this section does not include a Mámlatdár's Court under Bombay Act No. III of 1876 (*to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts*)."

New section substituted for section 48.

10. For section forty-eight the following section shall be substituted:—

Allowance to be made in period of limitation.

"48. In computing the period of limitation prescribed for any such suit or application the time intervening between the application made by the plaintiff under section thirty-nine and the grant of the certificate under section forty-six shall be excluded.

Limitation in certain cases.

"Any such application which after the first day of November, 1879, has been rejected, and which, if such time had been excluded in computing the period of limitation prescribed for such application, would have been entertained, shall be entertained if made within two months from the twenty-sixth day of October, 1881.

New section substituted for section 51.

11. For section fifty-one the following section shall be substituted:—

District Judge may withdraw case from Conciliator or Subordinate Judge,

"51. The District Judge may—

"(*a*) transfer any application pending before a Conciliator to the file of any other Conciliator;

"(*b*) transfer to his own file any suit or other matter pending before the Court of any Subordinate Judge under Chapter II or Chapter IV of this Act, and may dispose of the same as if he were a Subordinate Judge; or

"(c) stay the proceedings in any such suit or matter, and sit together with such Judge as a Bench to dispose of such suit or matter in accordance with the provisions of this Act.

Or sit with Subordinate Judge as a Bench for trial of any case.

"If the members of any Bench sitting under this section differ in opinion, the opinion of the District Judge shall prevail."

Addition to section 56.

12. To section fifty-six the following shall be added, namely :—

"or apply to any instrument which is executed by an agriculturist merely as a surety."

New section substituted for section 57.

13. For section fifty-seven the following section shall be substituted :—

"57. When any persons intend to execute any instrument to which section fifty-six applies, all such persons shall appear before the Village Registrar appointed for the area in which the agriculturist, or when there are several agriculturists intending to execute the instrument, any one of such agriculturists, resides, and such Registrar, after satisfying himself in such manner as he deems fit as to the identity of the intending executants and receiving the fee (if any) prescribed by the local Government in this behalf, and the stamp (if any) which may be required by law, shall write the instrument, or cause the same to be written under his superintendence; and after reading the same aloud, or causing it to be so read, in the hearing of the intending executants, shall require them to execute it in his presence.

Such instruments to be written by, or under the superintendence of, a Village Registrar and executed in his presence.

"Every instrument so written and executed shall at the time of execution be attested by the Village Registrar; and also, if any of the executants thereof is unable to read such instrument, by two respectable witnesses.

Attestation of such instruments.

"For the purposes of this section every executant of any such instrument shall appear in person before the Village Registrar; but every other party thereto may appear either in person or by any agent, being his relative, servant or dependent, whom he has duly furnished with a power-of-attorney authorizing him to appear and act on his behalf."

14. In section fifty-eight, for the words "parties to any instrument have executed it," the words "intending executants have executed any instrument" shall be substituted.

Amendment of section 58.

New section substituted for section 68.

15. For section sixty-eight the following section shall be substituted :—

"68. No pleader, vakíl or mukhtár, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any case before a Conciliator or a Village-Munsif the subject-matter whereof does not exceed in amount or value one hundred rupees:

Pleaders, &c., excluded in certain cases.

"Provided that any party to any such case may be permitted, on reasonable cause being shown to the satisfaction of the Conciliator or Village-Munsif, to employ any relative, servant or dependent who is not, and has not previously been, a pleader, vakíl or mukhtár, or an advocate or attorney of a High Court, to appear either conjointly with, or in lieu of, such party.

"When a relative, servant or dependent appears in lieu of a party, he shall be furnished by him with a power-of-attorney defining the extent to which he is empowered to act."

Repeal of section 71.

16. Section seventy-one is hereby repealed.

New section substituted for section 72.

17. For section seventy-two the following section shall be substituted :—

"72. In any suit under this Act for the recovery of money from a person, not being merely a surety for the principal debtor, who at the time when the cause of action arose was an agriculturist, the following periods of limitation shall be deemed to be substituted for those prescribed in the second column of the second schedule annexed to the Indian Limitation Act, 1877 (that is to say) :—

Limitation.

"(a) When such suit is founded on a written instrument registered under this Act or any law in force at the date of the execution of such instrument,—twelve years;

"(b) in any other case,—six years:

"Provided that nothing herein contained shall revive the right to bring any suit which would have been barred by limitation if it had been instituted immediately before this Act comes into force."

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th October, 1881, and is hereby promulgated for general information :—

ACT No. XXIV OF 1881.

An Act to amend the Panjáb Laws Act, 1872.

WHEREAS, in order to provide for the establishment of a system of municipal-watchmen in certain municipalities in the territories administered by the Lieutenant-Governor of the Panjáb, it is expedient to amend the Panjáb Laws Act, 1872; It is hereby enacted as follows :—

Preamble.

1. This Act may be called "The Panjáb Laws Amendment Act, 1881," and shall come into force at once.

Short title.

Commencement.

2. For sections 39A and 39B of the said Act, the following sections shall be substituted :—

Substitution of new sections for sections 39A and 39B.

"39A. The Local Government may establish a system of village-watchmen or municipal-watchmen in any part of the territories under its administration, and in furtherance of this object may, from time to time, make rules to provide for the following matters :—

Power to establish system of village-watchmen and municipal-watchmen, and to make rules.

(a) the definition of the limits of watchmen's beats;

(b) the determination of the several grades of watchmen, and the number of each grade to be appointed to each beat;

(c) the appointment, suspension, dismissal and resignation of watchmen of each grade;

(d) the equipment and discipline of, and the control and supervision over, such watchmen;

(e) the conferring upon them, and the exercise by them, of any powers, and the enjoyment by them of any protection or privilege, which may be exercised and enjoyed by a police-officer under any law for the time being in force;

(f) the performance by them of such duties relating to police, sanitation or statistics, or for the benefit of the village-communities or municipalities within their respective beats, as the Local Government thinks fit;

(g) the exercise of authority over, and the rendering of aid to, such watchmen by headmen of the villages or members of the Municipal Committees of the towns comprised in their respective beats;

(h) the performance, by the headmen of villages comprised in the beat of any watchman, of any of the duties of a village-watchman in aid of, or substitution for, such watchman;

(i) the exercise, by such village-headmen for the purposes referred to in clauses (g) and (h), or by members of Municipal Committees for the purposes referred to in clause (g) of this section, of any of the powers, and the enjoyment by such headmen or members of any privilege or protection, of a village-watchman or a municipal-watchman as the case may be;

(j) the determination of the rate at which, and the mode in which, watchmen shall be paid, and, in the case of village-watchmen, of the mode in which their pay, the expenses of their equipment, and other charges connected with the village-watchman system shall be provided for, whether out of cesses or funds already leviable or available in the villages comprised in the beat, or by a special tax in money or kind to be imposed on any class of persons residing or owning property in, or resorting to, such villages, or partly in one of these ways and partly in the other;

(k) the collection with or without the aid of the village-headmen, and by any process available for the realization of the land-revenue, of any tax imposed under clause (j) of this section, and the application of, and the mode of accounting for, the same; and generally for

(l) the efficient working of the system of village-watchmen or municipal-watchmen:

"Provided—

1st,—that the rules to be made regarding the appointment of village-watchmen shall allow to the headmen of the villages comprised in the beat to which such a watchman is to be appointed, a power of nomination to be exercised in such manner, and subject to such reasonable conditions, as may be prescribed by such rules;

2ndly,—that the rules to be made under clause (*j*) of this section with regard to village-watchmen shall include provisions for recording and securing due consideration of the views and opinions on the matters therein referred to of the headmen of the villages comprised in each beat.

"39B. Every person is bound to render to a village-watchman, or municipal-watchman, or village-headman discharging the duties of a police-officer under the rules made hereunder, all the assistance which he is bound to render to a police-officer.

Obligation to assist watchmen and headmen.

"Any person who obstructs such watchman or headman in the discharge of such duties may be arrested without warrant by a police-officer or by any watchman or village-headman empowered in this behalf by the Local Government."

Person obstructing watchman or headman may be arrested without warrant.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 27th October, 1881, and is hereby promulgated for general information:—

ACT No. XXV OF 1881.

An Act to amend the law in force in the Mahál of Bánki.

WHEREAS it has been determined to annex the territory comprised in the mahál of Bánki to the district of Katak:

Preamble.

And whereas the said territory forms portion of a scheduled district under the Scheduled Districts Act, 1874:

And whereas it is expedient that the law in force in the said territory should, on such annexation, be the same as the law in force in the district of Katak, and that the said territory should cease to be a portion of a scheduled district:

It is hereby enacted as follows:—

1. This Act may be called "The Bánki Laws Act, 1881."

Short title.

2. All enactments which shall on the first day of April, 1882, be in force in the district of Katak and not in the said territory shall be deemed to come into force in the said territory on that day:

Laws of Katak to apply.

And all enactments which shall on that day be in force in the said territory and not in the district of Katak shall be deemed to be repealed on and from that day in the said territory.

Other laws repealed.

3. All proceedings commenced before any authority in the said territory before the said first day of April, 1882, and still pending on the said day, shall be disposed of by such authority as the Local Government may direct; and, save as aforesaid, shall be carried on as if this Act had not been passed.

Pending proceedings.

4. On and from the said first day of April, 1882, the said territory shall cease to be a portion of a scheduled district; and in Part III of the first schedule to the said Scheduled Districts Act, 1874, for the words "Maháls of Angúl and Bánki," the words "Mahál of Angúl" shall be substituted;

Territory to cease to be a scheduled district.

And in the following Bengal Regulations, namely, Regulation XII of 1805, section thirty-six, Regulation XIII of 1805, section thirteen, and Regulation XI of 1816, section two, the words "Ditto Bánki" shall be repealed.

Amendment of certain Bengal Regulations.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, DECEMBER 10, 1881.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 9th December, 1881, and is hereby promulgated for general information:—

ACT No. XXVI OF 1881.

THE NEGOTIABLE INSTRUMENTS ACT, 1881.

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SCHEDULE.

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

Preamble.

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Negotiable Instruments Act, 1881:"

Local extent.

It extends to the whole of British India; but

Saving of usages relating to hundís, &c.

nothing herein contained affects the Indian Paper Currency Act, 1871, section twenty-one, or affects any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act;

Commencement.

and it shall come into force on the first day of March, 1882.

Repeal of enactments.

2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof.

Interpretation-clause.

3. In this Act—

"Banker":

"Banker" includes also persons or a corporation or company acting as bankers; and

"Notary Public."

"Notary Public" includes also any person appointed by the Governor General in Council to perform the functions of a Notary Public under this Act.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

"Promissory note."

4. A "promissory note" is an instrument in writing (not being a banknote or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations.

A signs instruments in the following terms:—

(a). "I promise to pay B or order Rs. 500."

(b). "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received."

(c). "Mr. B, I O U Rs. 1,000."

(d). "I promise to pay B Rs. 500 and all other sums which shall be due to him."

(e). "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."

(f). "I promise to pay B Rs. 500 seven days after my marriage with C."

(g). "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(h). "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. "Bill of exchange."

A promise or order to pay is not "conditional," within the meaning of this section and section four, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain," within the meaning of this section and section four, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person," within the meaning of this section and section four, although he is mis-named or designated by description only.

6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. "Cheque."

7. The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee." "Drawer." "Drawee."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need." "Drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor." "Acceptor."

When acceptance is refused and the bill is protested for non-acceptance, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour." "Acceptor for honour."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee." "Payee."

8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. "Holder."

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, "Holder in due course."

or the payee or indorsee thereof, if payable to, or to the order of, a payee,

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned. "Payment in due course."

11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India shall be deemed to be an inland instrument. Inland instrument.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument. Foreign instrument.

13. A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer thereof. "Negotiable instrument."

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated. Negotiation.

15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser." Indorsement.

16. If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument. Indorsement "in blank" and "in full." "Indorsee."

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly. Ambiguous instruments.

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid. Where amount is stated differently in figures and words.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand. Instruments payable on demand.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *primâ facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder. Inchoate stamped instruments.

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance. "At sight." "On presentment." "After sight."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due. "Maturity."

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable. Days of grace.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month. Calculating maturity of bill or note payable so many months after date or sight.

Illustrations.

(*a*). A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878

(*b*). A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(*c*). A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded. Calculating maturity of bill or note payable so many days after date or sight.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day. When day of maturity is a holiday.

Explanation.—The expression "public holiday" includes Sundays: New-Year's day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good-Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque. Capacity to make, &c., promissory notes, &c.

A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself. Minor.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

27. Every person capable of binding himself or of being bound, as mentioned in section twenty-six, may so bind himself or be bound by a duly authorized agent acting in his name. Agency.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

28. An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable. Liability of agent signing.

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such. Liability of legal representative signing.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawer.

31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of drawee of cheque.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

Liability of maker of note and acceptor of bill.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Only drawee can be acceptor except in need or for honour.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Acceptance by several drawees not partners.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Liability of indorser.

Every indorser after dishonour is liable as upon an instrument payable on demand.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Liability of prior parties to holder in due course.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Maker, drawer and acceptor principals.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Prior party a principal in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

Suretyship.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Discharge of indorser's liability.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank:—

First indorsement, "B."
Second indorsement, "Peter Williams."
Third indorsement, "Wright & Co."
Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptor bound, although indorsement forged.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Acceptance of bill drawn in fictitious name.

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Negotiable instrument made, &c., without consideration.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Partial absence or failure of money-consideration.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Partial failure of consideration not consisting of money.

CHAPTER IV.

OF NEGOTIATION.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

Delivery.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

47. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Negotiation by delivery.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

(*a*). A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(*b*). A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

48. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

Negotiation by indorsement.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Conversion of indorsement in blank into indorsement in full.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Effect of indorsement.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

(*a*) "Pay the contents to C only."

(*b*) "Pay C for my use."

(*c*) "Pay C or order for the account of B."

(*d*) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(*e*) "Pay C."

(*f*) "Pay C value in account with the Oriental Bank."

(*g*) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section fifty, indorse and negotiate the same.

Who may negotiate.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Indorser who excludes his own liability or makes it conditional.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(*a*). The indorser of a negotiable instrument signs his name, adding the words—

"Without recourse."

Upon this indorsement he incurs no liability.

(*b*). A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Holder deriving title from holder in due course.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Instrument indorsed in blank.

55. If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Conversion of indorsement in blank into indorsement in full.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Indorsement for part of sum due.

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

58. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument obtained by unlawful means or for unlawful consideration.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Instrument acquired after dishonour or when overdue.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Accommodation note or bill.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

Instrument negotiable till payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Presentment for acceptance.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Presentment of promissory note for sight.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

Drawee's time for deliberation.

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Presentment for payment.

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Hours for presentment.

66. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment for payment of instrument payable after date or sight.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Presentment for payment of promissory note payable by instalments.

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Presentment for payment of instrument payable at specified place and not elsewhere.

69. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Instrument payable at specified place.

70. A promissory note or bill of exchange, not made payable as mentioned in sections sixty-eight and sixty-nine, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment where no exclusive place specified.

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Presentment when maker, &c., has no known place of business or residence.

72. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge drawer.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of cheque, to charge any other person.

74. Subject to the provisions of section thirty-one, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment of instrument payable on demand.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

Presentment by or to agent, representative of deceased, or assignee of insolvent.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:—

When presentment unnecessary.

(*a*) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or

if the instrument not being payable at any specified place, he cannot after due search be found;

(*b*) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(*c*) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. When a bill of exchange, accepted payable at a specified bank, has been duly presented thereat for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Liability of banker for negligently dealing with bill presented for payment.

CHAPTER VI.

OF PAYMENT AND INTEREST.

78. Subject to the provisions of section eighty-two, clause (*c*), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

To whom payment should be made.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until

Interest when rate specified.

such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate specified.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

Delivery of instrument on payment, or indemnity in case of loss.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

Discharge from liability—

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

by cancellation;

(*a*) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

by release;

(*b*) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

(*c*) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

Discharge by allowing drawee more than twenty-four hours to accept.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

When cheque not duly presented and drawer damaged thereby.

When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

Cheque payable to order.

85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Parties not consenting discharged by qualified or limited acceptance.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation.—An acceptance is qualified—

(*a*) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(*b*) where it undertakes the payment of part only of the sum ordered to be paid;

(*c*) where, no place of payment being specified on the order, it undertakes the payment at a specified place and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(*d*) where it undertakes the payment at a time other than that at which under the order it would be legally due.

Effect of material alteration.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee.

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections twenty, forty-nine, eighty-six and one hundred and twenty-five.

Acceptor or indorser bound notwithstanding previous alteration.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Payment of instrument on which alteration is not apparent.

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

Extinguishment of rights of action on bill in acceptor's hands.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

Dishonour by non-acceptance.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

Dishonour by non-payment.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

By and to whom notice should be given.

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Mode in which notice may be given.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Party receiving must transmit notice of dishonour.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section ninety-three.

Agent for presentment.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time for notice to his principal as if he were himself giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

When party to whom notice given is dead.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary.

98. No notice of dishonour is necessary—

(*a*) when it is dispensed with by the party entitled thereto;

(*b*) in order to charge the drawer, when he has countermanded payment;

(*c*) when the party charged could not suffer damage for want of notice;

(*d*) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(*e*) to charge the drawers, when the acceptor is also a drawer;

(*f*) in the case of a promissory note which is not negotiable;

(*g*) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

Noting.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Protest.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on his being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Contents of protest.

101. A protest under section one hundred must contain—

(*a*) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(*b*) the name of the person for whom and against whom the instrument has been protested;

(*c*) a statement that payment or acceptance or better security, as the case may be, has been demanded of such person by the notary public, the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;

(*d*) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;

(*e*) the subscription of the notary public making the protest;

(*f*) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

Notice of protest.

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

Protest for non-payment after dishonour by non-acceptance.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

Protest of foreign bills.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

CHAPTER X.

OF REASONABLE TIME.

Reasonable time.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

Reasonable time of giving notice of dishonour.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Reasonable time for transmitting such notice.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

Acceptance for honour.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Unless the person who intends to accept *supra protest* first declares, in the presence of a notary, that he does it for honour, and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity.

How acceptance for honour must be made.

109. A person desiring to accept for honour must, in the presence of a notary public, subscribe the bill with his own hand, and declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour; and such declaration must be recorded by the notary in his register.

Acceptance not specifying for whose honour it is made.

110. Where the acceptance does not express for whose honour it is made, it shall be decined to be made for the honour of the drawer.

Liability of acceptor for honour.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

When acceptor for honour may be charged.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

Payment for honour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Right of payer for honour.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

Drawee in case of need.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Acceptance and payment without protest.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII.

OF COMPENSATION.

Rules as to compensation.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532) be determined by the following rules:—

(*a*) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

(*b*) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

(*c*) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;

(*d*) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

(*e*) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

Presumptions as to negotiable instruments.

118. Until the contrary is proved, the following presumptions shall be made:—

(*a*) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

as to consideration;

(*b*) that every negotiable instrument bearing a date was made or drawn on such date;

as to date;

(*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

as to time of acceptance;

(*d*) that every transfer of a negotiable instrument was made before its maturity;

as to time of transfer;

(*e*) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

as to order of indorsements;

(*f*) that a lost promissory note, bill of exchange or cheque was duly stamped;

as to stamp;

that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

that holder is a holder in due course.

Presumption on proof of protest.

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

Estoppel against denying original validity of instrument.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel against denying capacity of payee to indorse.

121. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Estoppel against denying signature or capacity of prior party.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

CHAPTER XIV.

OF CROSSED CHEQUES.

Cheque crossed generally.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Cheque crossed specially.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after issue.

125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

Payment of cheque crossed generally.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

Payment of cheque crossed specially more than once.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Payment in due course of crossed cheque.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Payment of crossed cheque out of due course.

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Cheque bearing "not negotiable."

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

Non-liability of banker receiving payment of cheque.

CHAPTER XV.

OF BILLS IN SETS.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Set of bills.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

133. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

Holder of first acquired part entitled to all.

CHAPTER XVI.

OF INTERNATIONAL LAW.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Law governing liability of maker, acceptor or indorser of foreign instrument.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Law of place of payment governs dishonour.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

Instrument made, &c., out of British India, but in accordance with its law.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

Presumption as to foreign law.

SCHEDULE.

(*a*)—STATUTES.

Year and chapter.	Title.	Extent of repeal.
9 Wm. III, c. 17	An Act for the better payment of Inland Bills of Exchange.	The whole.
3 & 4 Anne, c. 8.	An Act for giving like remedy upon promissory notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.	The whole.

(*b*)—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

No. and year.	Title.	Extent of repeal.
VI of 1840 ...	An Act for the amendment of the law concerning the negotiation of Bills of Exchange.	The whole.
V of 1866 ...	An Act to amend in certain respects the Commercial Law of British India.	Sections 11, 12 and 13.
XV of 1874 ...	The Laws Local Extent Act, 1874.	The first schedule, so far as relates to Act VI of 1840 and Act V of 1866, sections 11, 12 and 13.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

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☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 9th December, 1881, and is hereby promulgated for general information:—

ACT No. XXVI OF 1881.

THE NEGOTIABLE INSTRUMENTS ACT, 1881.

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SCHEDULE.

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

Preamble.

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Negotiable Instruments Act, 1881:"

Local extent.

Saving of usages relating to hundis, &c.

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1871, section twenty-one, or affects any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act;

Commencement.

and it shall come into force on the first day of March, 1882.

Repeal of enactments.

2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof.

Interpretation-clause.

3. In this Act—

"Banker":

"Banker" includes also persons or a corporation or company acting as bankers; and

"Notary Public."

"Notary Public" includes also any person appointed by the Governor General in Council to perform the functions of a Notary Public under this Act.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

"Promissory note."

4. A "promissory note" is an instrument in writing (not being a banknote or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations.

A signs instruments in the following terms:—

(*a*). "I promise to pay B or order Rs. 500."

(*b*). "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received."

(*c*). "Mr. B, I O U Rs. 1,000."

(*d*). "I promise to pay B Rs. 500 and all other sums which shall be due to him."

(*e*). "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."

(*f*). "I promise to pay B Rs. 500 seven days after my marriage with C."

(*g*). "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(*h*). "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (*a*) and (*b*) are promissory notes. The instruments respectively marked (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*) are not promissory notes.

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

"Bill of exchange."

A promise or order to pay is not "conditional," within the meaning of this section and section four, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain," within the meaning of this section and section four, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person," within the meaning of this section and section four, although he is mis-named or designated by description only.

6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

"Cheque."

7. The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee."

"Drawer."
"Drawee."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

"Drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor."

"Acceptor."

When acceptance is refused and the bill is protested for non-acceptance, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

"Acceptor for honour."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

"Payee."

8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

"Holder."

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer,

"Holder in due course."

or the payee or indorsee thereof, if payable to, or to the order of, a payee,

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

"Payment in due course."

11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India shall be deemed to be an inland instrument.

Inland instrument.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

Foreign instrument.

13. A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer thereof.

"Negotiable instrument."

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Negotiation.

15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

Indorsement.

16. If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument.

Indorsement "in blank" and "in full."
"Indorsee."

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Ambiguous instruments.

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Where amount is stated differently in figures and words.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

Instruments payable on demand.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *primâ facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

Inchoate stamped instruments.

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

"At sight."
"On presentment."
"After sight."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

"Maturity."

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

Days of grace.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Calculating maturity of bill or note payable so many months after date or sight.

Illustrations.

(*a*). A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(*b*). A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(*c*). A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

Calculating maturity of bill or note payable so many days after date or sight.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

When day of maturity is a holiday,

Explanation.—The expression "public holiday" includes Sundays: New-Year's day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good-Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Capacity to make, &c., promissory notes, &c.

A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself.

Minor.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

27. Every person capable of binding himself or of being bound, as mentioned in section twenty-six, may so bind himself or be bound by a duly authorized agent acting in his name.

Agency.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

28. An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of agent signing.

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Liability of legal representative signing.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawer.

31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of drawee of cheque.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

Liability of maker of note and acceptor of bill.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Only drawee can be acceptor except in need or for honour.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Acceptance by several drawees not partners.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Liability of indorser.

Every indorser after dishonour is liable as upon an instrument payable on demand.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Liability of prior parties to holder in due course.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Maker, drawer and acceptor principals.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Prior party a principal in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

Suretyship.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Discharge of indorser's liability.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank:—

First indorsement, "B."
Second indorsement, "Peter Williams."
Third indorsement, "Wright & Co."
Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptor bound, although indorsement forged.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Acceptance of bill drawn in fictitious name.

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Negotiable instrument made, &c., without consideration.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Partial absence or failure of money-consideration.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Partial failure of consideration not consisting of money.

CHAPTER IV.

OF NEGOTIATION.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

Delivery.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

47. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Negotiation by delivery.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

(*a*). A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(*b*). A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

48. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

Negotiation by indorsement.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Conversion of indorsement in blank into indorsement in full.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Effect of indorsement.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

(*a*) "Pay the contents to C only."

(*b*) "Pay C for my use."

(*c*) "Pay C or order for the account of B."

(*d*) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(*e*) "Pay C."

(*f*) "Pay C value in account with the Oriental Bank."

(*g*) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section fifty, indorse and negotiate the same.

Who may negotiate.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Indorser who excludes his own liability or makes it conditional.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(*a*). The indorser of a negotiable instrument signs his name, adding the words—

"Without recourse."

Upon this indorsement he incurs no liability.

(*b*). A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Holder deriving title from holder in due course.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Instrument indorsed in blank.

55. If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Conversion of indorsement in blank into indorsement in full.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Indorsement for part of sum due.

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

58. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument obtained by unlawful means or for unlawful consideration.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Instrument acquired after dishonour or when overdue.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Accommodation note or bill.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

Instrument negotiable till payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Presentment for acceptance.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Presentment of promissory note for sight.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

Drawee's time for deliberation.

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Presentment for payment.

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Hours for presentment.

66. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment for payment of instrument payable after date or sight.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Presentment for payment of promissory note payable by instalments.

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Presentment for payment of instrument payable at specified place and not elsewhere.

69. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Instrument payable at specified place.

70. A promissory note or bill of exchange, not made payable as mentioned in sections sixty-eight and sixty-nine, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment where no exclusive place specified.

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Presentment when maker, &c., has no known place of business or residence.

72. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge drawer.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of cheque to charge any other person.

74. Subject to the provisions of section thirty-one, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment of instrument payable on demand.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

Presentment by or to agent, representative of deceased, or assignee of insolvent.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:—

When presentment unnecessary.

(*a*) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or

if the instrument not being payable at any specified place, he cannot after due search be found;

(*b*) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(*c*) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Liability of banker for negligently dealing with bill presented for payment.

CHAPTER VI.

OF PAYMENT AND INTEREST.

78. Subject to the provisions of section eighty-two, clause (*c*), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

To whom payment should be made.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until

Interest when rate specified.

such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate specified.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

Delivery of instrument on payment, or indemnity in case of loss.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

Discharge from liability—

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

by cancellation;

(*a*) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

by release;

(*b*) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

by payment.

(*c*) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

Discharge by allowing drawee more than twenty-four hours to accept.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

When cheque not duly presented and drawer damaged thereby.

84. When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

Cheque payable to order.

85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Parties not consenting discharged by qualified or limited acceptance.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation.—An acceptance is qualified—

(*a*) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(*b*) where it undertakes the payment of part only of the sum ordered to be paid;

(*c*) where, no place of payment being specified on the order, it undertakes the payment at a specified place and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(*d*) where it undertakes the payment at a time other than that at which under the order it would be legally due.

Effect of material alteration.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee.

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections twenty, forty-nine, eighty-six and one hundred and twenty-five.

Acceptor or indorser bound notwithstanding previous alteration.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Payment of instrument on which alteration is not apparent.

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

Extinguishment of rights of action on bill in acceptor's hands.

90. If a bill of exchange which has been negotiated, is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

Dishonour by non-acceptance.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

Dishonour by non-payment.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

By and to whom notice should be given.

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Mode in which notice may be given.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Party receiving must transmit notice of dishonour.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section ninety-three.

Agent for presentment.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

When party to whom notice given is dead.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary.

98. No notice of dishonour is necessary—

(*a*) when it is dispensed with by the party entitled thereto;

(*b*) in order to charge the drawer, when he has countermanded payment;

(*c*) when the party charged could not suffer damage for want of notice;

(*d*) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(*e*) to charge the drawers, when the acceptor is also a drawer;

(*f*) in the case of a promissory note which is not negotiable;

(*g*) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

Noting.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Protest.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Contents of protest.

101. A protest under section one hundred must contain—

(*a*) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(*b*) the name of the person for whom and against whom the instrument has been protested;

(*c*) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;

(*d*) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;

(*e*) the subscription of the notary public making the protest;

(*f*) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

Notice of protest.

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

Protest for non-payment after dishonour by non-acceptance.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

Protest of foreign bills.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

CHAPTER X.

OF REASONABLE TIME.

Reasonable time.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

Reasonable time of giving notice of dishonour.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Reasonable time for transmitting such notice.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

Acceptance for honour.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Unless the person who intends to accept *supra protest* first declares, in the presence of a notary, that he does it for honour, and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity.

How acceptance for honour must be made.

109. A person desiring to accept for honour must, in the presence of a notary public, subscribe the bill with his own hand, and declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour; and such declaration must be recorded by the notary in his register.

Acceptance not specifying for whose honour it is made.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Liability of acceptor for honour.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

When acceptor for honour may be charged.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

Payment for honour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Right of payer for honour.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

Drawee in case of need.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Acceptance and payment without protest.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII.

OF COMPENSATION.

Rules as to compensation.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532) be determined by the following rules:—

(*a*) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

(*b*) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

(*c*) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;

(*d*) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

(*e*) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

Presumptions as to negotiable instruments.

118. Until the contrary is proved, the following presumptions shall be made:—

(*a*) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

as to consideration;

(*b*) that every negotiable instrument bearing a date was made or drawn on such date;

as to date;

(*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

as to time of acceptance;

(*d*) that every transfer of a negotiable instrument was made before its maturity;

as to time of transfer;

(*e*) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

as to order of indorsements;

(*f*) that a lost promissory note, bill of exchange or cheque was duly stamped;

as to stamp;

(*g*) that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

that holder is a holder in due course.

Presumption on proof of protest.

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

Estoppel against denying original validity of instrument.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel against denying capacity of payee to indorse.

121. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Estoppel against denying signature or capacity of prior party.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

CHAPTER XIV.

OF CROSSED CHEQUES.

Cheque crossed generally.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Cheque crossed specially.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after issue.

125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

Payment of cheque crossed generally.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

Payment of cheque crossed specially more than once.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Payment in due course of crossed cheque.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Payment of crossed cheque out of due course.

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Cheque bearing "not negotiable."

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

Non-liability of banker receiving payment of cheque.

CHAPTER XV.

OF BILLS IN SETS.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Set of bills.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

133. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

Holder of first acquired part entitled to all.

CHAPTER XVI.

OF INTERNATIONAL LAW.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Law governing liability of maker, acceptor or indorser of foreign instrument.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in British India, and is dishoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Law of place of payment governs dishonour.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

Instrument made, &c., out of British India, but in accordance with its law.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

Presumption as to foreign law.

SCHEDULE.

(*a*)—STATUTES.

Year and chapter.	Title.	Extent of repeal.
9 Wm. III, c. 17	An Act for the better payment of Inland Bills of Exchange.	The whole.
3 & 4 Anne, c. 8.	An Act for giving like remedy upon promissory notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.	The whole.

(*b*)—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

No. and year.	Title.	Extent of repeal.
VI of 1840 ...	An Act for the amendment of the law concerning the negotiation of Bills of Exchange.	The whole.
V of 1866 ...	An Act to amend in certain respects the Commercial Law of British India.	Sections 11, 12 and 13.
XV of 1874 ...	The Laws Local Extent Act, 1874.	The first schedule, so far as relates to Act VI of 1840 and Act V of 1866, sections 11, 12 and 13.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

The Gazette of India.

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☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 9th December, 1881, and is hereby promulgated for general information:—

ACT No. XXVI OF 1881.

THE NEGOTIABLE INSTRUMENTS ACT, 1881.

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SCHEDULE.

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques,

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Negotiable Instruments Act, 1881:" Short title.

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1871, section twenty-one, or affects any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882. Local extent. Saving of usages relating to hundís, &c. Commencement.

2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof. Repeal of enactments.

3. In this Act— Interpretation-clause.

"Banker" includes also persons or a corporation or company acting as bankers; and "Banker":

"Notary Public" includes also any person appointed by the Governor General in Council to perform the functions of a Notary Public under this Act. "Notary Public."

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

4. A "promissory note" is an instrument in writing (not being a banknote or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. "Promissory note."

Illustrations.

A signs instruments in the following terms:—

(a). "I promise to pay B or order Rs. 500."

(b). "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received."

(c). "Mr. B, I O U Rs. 1,000."

(d). "I promise to pay B Rs. 500 and all other sums which shall be due to him."

(e). "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."

(f). "I promise to pay B Rs. 500 seven days after my marriage with C."

(g). "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(h). "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (a) and (h) are promissory notes. The instruments respectively marked (b), (d), (e), (f), (g) and (k) are not promissory notes.

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

"Bill of exchange."

A promise or order to pay is not "conditional," within the meaning of this section and section four, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain," within the meaning of this section and section four, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person," within the meaning of this section and section four, although he is mis-named or designated by description only.

6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

"Cheque."

7. The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee."

"Drawer."
"Drawee."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

"Drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor."

"Acceptor."

When acceptance is refused and the bill is protested for non-acceptance, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

"Acceptor for honour."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

"Payee."

8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

"Holder."

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer,

"Holder in due course."

or the payee or indorsee thereof, if payable to, or to the order of, a payee,

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

"Payment in due course."

11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India shall be deemed to be an inland instrument.

Inland instrument.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

Foreign instrument.

13. A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer thereof.

"Negotiable instrument."

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Negotiation.

15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

Indorsement.

16. If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument.

Indorsement "in blank" and "in full."
"Indorsee."

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Ambiguous instruments.

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Where amount is stated differently in figures and words.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

Instruments payable on demand.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *primâ facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

Inchoate stamped instruments.

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

"At sight."
"On presentment."
"After sight."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

"Maturity."

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

Days of grace.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Calculating maturity of bill or note payable so many months after date or sight.

Illustrations.

(*a*). A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(*b*). A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(*c*). A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

Calculating maturity of bill or note payable so many days after date or sight.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

When day of maturity is a holiday.

Explanation.—The expression "public holiday" includes Sundays: New-Year's day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good-Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Capacity to make, &c., promissory notes, &c.

A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself.

Minor.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

27. Every person capable of binding himself or of being bound, as mentioned in section twenty-six, may so bind himself or be bound by a duly authorized agent acting in his name.

Agency.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

28. An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of agent signing.

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Liability of legal representative signing.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawer.

31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of drawee of cheque.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

Liability of maker of note and acceptor of bill.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Only drawee can be acceptor except in need or for honour.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Acceptance by several drawees not partners.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Liability of indorser.

Every indorser after dishonour is liable as upon an instrument payable on demand.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Liability of prior parties to holder in due course.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Maker, drawer and acceptor principals.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Prior party a principal in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

Suretyship.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Discharge of indorser's liability.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank :—

First indorsement, "B."
Second indorsement, "Peter Williams."
Third indorsement, "Wright & Co."
Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptor bound, although indorsement forged.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Acceptance of bill drawn in fictitious name.

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Negotiable instrument made, &c., without consideration.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Partial absence or failure of money-consideration.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Partial failure of consideration not consisting of money.

CHAPTER IV.

OF NEGOTIATION.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

Delivery.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

47. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Negotiation by delivery.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

(*a*). A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(*b*). A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

48. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

Negotiation by indorsement.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Conversion of indorsement in blank into indorsement in full.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Effect of indorsement.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer :—

(*a*) "Pay the contents to C only."

(*b*) "Pay C for my use."

(*c*) "Pay C or order for the account of B."

(*d*) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(*e*) "Pay C."

(*f*) "Pay C value in account with the Oriental Bank."

(*g*) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section fifty, indorse and negotiate the same.

Who may negotiate.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Indorser who excludes his own liability or makes it conditional.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(*a*). The indorser of a negotiable instrument signs his name, adding the words—

"Without recourse."

Upon this indorsement he incurs no liability.

(*b*). A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Holder deriving title from holder in due course.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Instrument indorsed in blank.

55. If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Conversion of indorsement in blank into indorsement in full.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Indorsement for part of sum due.

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

58. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument obtained by unlawful means or for unlawful consideration.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Instrument acquired after dishonour or when overdue.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Accommodation note or bill.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

Instrument negotiable till payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Presentment for acceptance.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Presentment of promissory note for sight.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

Drawee's time for deliberation.

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Presentment for payment.

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Hours for presentment.

66. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment for payment of instrument payable after date or sight.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Presentment for payment of promissory note payable by instalments.

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Presentment for payment of instrument payable at specified place and not elsewhere.

69. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Instrument payable at specified place.

70. A promissory note or bill of exchange, not made payable as mentioned in sections sixty-eight and sixty-nine, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment where no exclusive place specified.

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Presentment when maker, &c., has no known place of business or residence.

72. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge drawer.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of cheque to charge any other person.

74. Subject to the provisions of section thirty-one, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment of instrument payable on demand.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

Presentment by or to agent, representative of deceased, or assignee of insolvent.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:—

When presentment unnecessary.

(*a*) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or

if the instrument not being payable at any specified place, he cannot after due search be found;

(*b*) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(*c*) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Liability of banker for negligently dealing with bill presented for payment.

CHAPTER VI.

OF PAYMENT AND INTEREST.

78. Subject to the provisions of section eighty-two, clause (*c*), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

To whom payment should be made.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until

Interest when rate specified.

such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate specified.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

Delivery of instrument on payment, or indemnity in case of loss.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

Discharge from liability—

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

by cancellation;

(*a*) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

by release;

(*b*) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

by payment.

(*c*) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

Discharge by allowing drawee more than twenty-four hours to accept.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

When cheque not duly presented and drawer damaged thereby.

84. When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

Cheque payable to order.

85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Parties not consenting discharged by qualified or limited acceptance.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation.—An acceptance is qualified—

(*a*) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(*b*) where it undertakes the payment of part only of the sum ordered to be paid;

(*c*) where, no place of payment being specified on the order, it undertakes the payment at a specified place and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(*d*) where it undertakes the payment at a time other than that at which under the order it would be legally due.

Effect of material alteration.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee.

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections twenty, forty-nine, eighty-six and one hundred and twenty-five.

Acceptor or indorser bound notwithstanding previous alteration.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Payment of instrument on which alteration is not apparent.

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

Extinguishment of rights of action on bill in acceptor's hands.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

Dishonour by non-acceptance.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

Dishonour by non-payment.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

By and to whom notice should be given.

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Mode in which notice may be given.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Party receiving must transmit notice of dishonour.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section ninety-three.

Agent for presentment.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

When party to whom notice given is dead.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary.

98. No notice of dishonour is necessary—

(*a*) when it is dispensed with by the party entitled thereto;

(*b*) in order to charge the drawer, when he has countermanded payment;

(*c*) when the party charged could not suffer damage for want of notice;

(*d*) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(*e*) to charge the drawers, when the acceptor is also a drawer;

(*f*) in the case of a promissory note which is not negotiable;

(*g*) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

Noting.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Protest.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Contents of protest.

101. A protest under section one hundred must contain—

(*a*) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(*b*) the name of the person for whom and against whom the instrument has been protested;

(*c*) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;

(*d*) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;

(*e*) the subscription of the notary public making the protest;

(*f*) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

Notice of protest.

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

Protest for non-payment after dishonour by non-acceptance.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

Protest of foreign bills.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

CHAPTER X.

OF REASONABLE TIME.

Reasonable time.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

Reasonable time of giving notice of dishonour.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Reasonable time for transmitting such notice.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

Acceptance for honour.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Unless the person who intends to accept *supra protest* first declares, in the presence of a notary, that he does it for honour, and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity.

How acceptance for honour must be made.

109. A person desiring to accept for honour must, in the presence of a notary public, subscribe the bill with his own hand, and declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour; and such declaration must be recorded by the notary in his register.

Acceptance not specifying for whose honour it is made.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Liability of acceptor for honour.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

When acceptor for honour may be charged.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

Payment for honour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Right of payer for honour.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

Drawee in case of need.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Acceptance and payment without protest.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII.

OF COMPENSATION.

Rules as to compensation.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, [illegible] is entitled [illegible] the amount due upon the instrument, together with the expenses properly incurred in presenting and protesting it;

(*b*) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum as the current rate of exchange between the two places;

(*c*) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;

(*d*) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

(*e*) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

Presumptions as to negotiable instruments.

118. Until the contrary is proved, the following presumptions shall be made:—

of consideration;

(*a*) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

as to date;

(*b*) that every negotiable instrument bearing a date was made or drawn on such date;

as to time of acceptance;

(*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

as to time of transfer;

(*d*) that every transfer of a negotiable instrument was made before its maturity;

as to order of indorsements;

(*e*) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

as to stamp;

(*f*) that a lost promissory note, bill of exchange or cheque was duly stamped;

that holder is a holder in due course.

(*g*) that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

Presumption on proof of protest.

[illegible] been dishonoured, the court shall, on proof of protest, presume the dishonour, unless and until such fact is disproved.

Estoppel against denying original validity of instrument.

120. No maker of a promissory note and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange drawn payable to the order of a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel against denying capacity of payee to indorse.

121. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Estoppel against denying signature or capacity of prior party.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

CHAPTER XIV.

OF CROSSED CHEQUES.

Cheque crossed generally.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Cheque crossed specially.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after issue.

125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

Payment of cheque crossed generally.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

Payment of cheque crossed specially more than once.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

cheque is drawn has paid the same in due course, the banker paying the cheque, in due course, the cheque has come to the hands of the drawer thereof, shall respectively or to the same rights, and be placed in position in all respects, as they would ly be entitled to and placed in if the t of the cheque had been paid to and received the true owner thereof.

(e) Cheque.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Payment of crossed cheque out of due course.

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Cheque bearing "not negotiable."

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

Non-liability of banker receiving payment of cheque.

CHAPTER XV.
OF BILLS IN SETS.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Set of bills.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

133. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

Holder of first acquired part entitled to all.

CHAPTER XVI.
OF INTERNATIONAL LAW.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Law governing liability of maker, acceptor or indorser of foreign instrument.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in British India and is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

interest at the rate of per cent.

135. Where a promissory note, bill of exchange or cheque is made payable at one place and at another place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Law of place of payment governs dishonour.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

Instrument made, &c., out of British India, but in accordance with its law.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

Presumption as to foreign law.

SCHEDULE.

(*a*)—STATUTES.

Year and chapter.	Title.	Extent of repeal.
9 Wm. III, c. 17	An Act for the better payment of Inland Bills of Exchange.	The whole.
3 & 4 Anne, c. 8.	An Act for giving like remedy upon promissory notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.	The whole.

(*b*)—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

No. and year.	Title.	Extent of repeal.
VI of 1840 ...	An Act for the amendment of the law concerning the negotiation of Bills of Exchange.	The whole.
V of 1866 ...	An Act to amend in certain respects the Commercial Law of British India.	Sections 11, 12 and 13.
XV of 1874 ...	The Laws Local Extent Act, 1874.	The first schedule, so far as relates to Act VI of 1840 and Act V of 1866, sections 11, 12 and 13.

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Offg. Secy. to the Govt. of India.

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