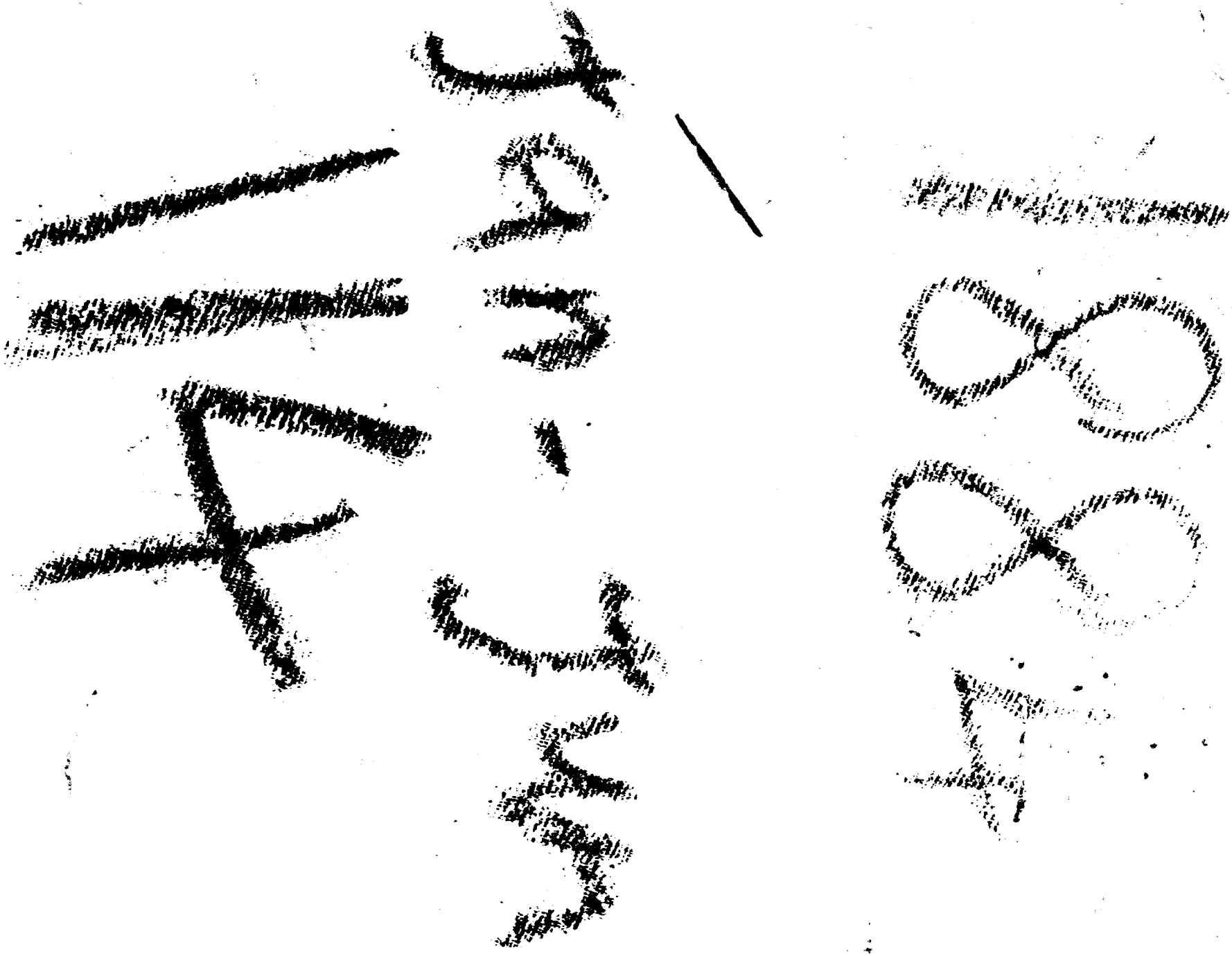


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☞Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th January, 1884, and was referred to a Select Committee:—

No. 1 OF 1884.

A Bill to amend and provide for the extension of the Northern India Takkavi Act, 1879.

WHEREAS it is expedient to amend the Northern India Takkavi Act, 1879 and provide for its extension to any part of British India; It is hereby enacted as follows:— X of 1879.

1. (*1*) This Act may be called the Agriculturists' Loans Act, 1884; and [Act X of 1879, s. 1].

Short title.

Commencement.

(*2*) It shall come into force on the first day of June, 1884.

2. (*1*) This section and section 3 extend to the whole of British India.

Local extent.

(*2*) The rest of this Act extends in the first instance only to the territories respectively administered by the Lieutenant-Governors of the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces, Assam and Ajmer.

(*3*) But any other Local Government may, from time to time, by notification in the official Gazette, extend the rest of this Act to the whole or any part of the territories under its administration.

3. (*1*) On and from the day on which this Act comes into force, the Northern India Takkávi Act, 1879, shall, except as regards the recovery of advances made before this Act comes into force, be repealed. X of 1879.

Repeal of Act X of 1879.

(*2*) All rules made under that Act shall be deemed to be made under this Act.

4. (*1*) The Local Government may, from time to time, with the previous sanction of the Governor General in Council, make rules as to loans to be made to owners and occupiers of arable land, for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Loans Act, 1883, but connected with agricultural objects. [Act X of 1879, s. 3]. XIX of 1883.

Power for Local Government to make rules.

(*2*) All such rules shall be published in the local official Gazette.

5. Every loan made in accordance with such rules, all interest (if any) chargeable thereon, and costs (if any) incurred in making or recovering the same, shall, when they become due, be recoverable from the person to whom the loan was made, or from any person who has become surety for the repayment thereof, as if they were arrears of land-revenue due by the person to whom the loan was made or by his surety. [Cf. Act X of 1879, s. 4].

Recovery of loans.

6. When a loan is made under this Act to the members of a village-community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed by each of them and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute. [Cf. Act XIX of 1883, s. 9.]

Liability of joint borrowers as among themselves.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to repeal the Northern India Takkáví Act and re-enact it with certain amendments which appear to be desirable.

First.—The existing law makes no provision for the recovery as an arrear of land-revenue of *interest* on loans made under it and of the costs (if any) incurred by the Government in making loans. Section 3 of Act X of 1879 only provides for the recovery in this way of the principal sum advanced. Section 5 of the Bill supplies this omission by providing that interest and costs (if any) may be recovered as an arrear of land-revenue in the same manner as the principal.

Secondly.—Act X of 1879 extends only to certain limited areas, namely, the North-Western Provinces and Oudh, the Panjáb, the Central Provinces, Assam and Ajmer. At present, there is no law in force in Bengal or Coorg under which advances of the nature of those with which the Act deals can be made. There are provisions relating to such advances in the laws in force in Bombay, Madras and British Burma; but the Local Governments of Bombay and Madras are prepared to accept the extension of the Northern India Act to their provinces; and the Chief Commissioner of British Burma says that, if that Act is not extended to his province, it will be necessary to amend the law at present in force there in order to provide for the recovery of interest on advances. Provision has, therefore, been made in section 2 of the Bill empowering any Local Government, if it thinks fit, to extend the Act to the whole or any part of the territories under its administration.

Thirdly.—A new section (6) has, at the request of the Panjáb Government, been inserted in the Bill, similar to section 9 of the Land Improvement Loans Act, 1883, recognizing the principle of making loans on the joint responsibility of village-communities.

Lastly.—As the term "Takkáví" is, it is understood, applied in some parts of India to advances of the nature of those to which the Land Improvement Loans Act relates, it is proposed to alter the present title and to style the new Act "the Agriculturists Loans Act."

S. C. BAYLEY.

The 7th January, 1884.

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th January 1884, and was referred to a Select Committee:—

No. 2 OF 1884.

A Bill for the validation of decisions passed on appeal by certain Settlement-officers in the Panjáb.

XIX of 1865. WHEREAS section 21 of the Panjáb Courts Act, 1865, provided that the Local Government might, with the previous sanction of the Governor General in Council, invest any special officer in any district in which a settlement of land-revenue might be in progress with the civil powers of a Commissioner, Deputy Commissioner, Assistant Commissioner or Tahsíldár, as defined in that Act, for the purpose of deciding suits with respect to land, or the rent, revenue or produce of land, such powers to be exercised on the Revenue side;

and whereas, under that section, the Local Government, with the previous sanction of the Governor General in Council, invested the Settlement Commissioner with the civil powers of a Commissioner, and invested certain Settlement-officers, Assistant Settlement-officers and Extra Assistant Settlement-officers with the civil powers of a Deputy Commissioner, for the purpose of deciding suits of the description hereinbefore mentioned in certain districts in which a settlement of land-revenue was in progress;

and whereas the officers so invested heard and determined appeals in such suits in the belief that they were duly empowered to hear and determine the same;

and whereas doubts have recently been raised as to whether those officers had power to hear and determine such appeals;

XVII of 1877. and whereas section 49 of the Panjáb Courts Act, 1877, provides that the Local Government may from time to time, by notification in the official Gazette, invest any officer making or controlling a settlement of land-revenue in any local area with all or any of the powers of any Court constituted under that Act, for the purpose of trying all or any specified class of suits and appeals relating to land, or the rent, revenue or produce of land, arising in that local area;

and whereas, by notifications published under that section, the Local Government invested the Financial Commissioner with the powers of the Chief Court, the Settlement Commissioner with the powers of a Commissioner, and certain Settlement-officers and Extra Assistant Settlement-officers with the powers of a Deputy Commissioner, for the purpose of trying certain classes of suits relating to land, or the rent, revenue and produce of land, in certain local areas in which a settlement of land-revenue was in progress, but no power to hear appeals was expressly given by those notifications;

and whereas the officers named in those notifications have heard and determined appeals in the belief that they were duly empowered by those notifications to hear and determine the same;

and whereas, where certain officers making or controlling settlements of land-revenue have exercised certain appellate powers, their successors in office have continued to exercise the like powers under the belief that they were entitled by mere operation of law to exercise the same;

and whereas it is apprehended that certain officers making or controlling settlements of land-revenue have exercised their judicial powers when at places beyond the local limits of their jurisdiction;

and whereas, for the quieting of titles and the avoidance of litigation, it is expedient that the decisions passed on appeal by officers engaged in making or controlling settlements in suits of the nature mentioned in section 21 or section 22 of the Panjáb Courts Act, 1865, and in section 49 of the Panjáb Courts Act, 1877, should not be impeached for want of authority in such officers, and that the validity of such decisions should be affirmed; XIX of 1865. XVII of 1877.

It is hereby enacted as follows:—

Validation of appellate decisions passed by officers invested with powers under section 21 of Act XIX of 1865 or section 49 of Act XVII of 1877.

1. (*a*) When any special officer invested under section 21 of the Panjáb Courts Act, 1865, with the civil powers of a Commissioner or Deputy Commissioner as defined in that Act for the purpose of deciding suits with respect to land, or the rent, revenue or produce of land, or XIX of 1865.

(*b*) when any officer making or controlling a settlement of land-revenue in any local area and invested under section 49 of the Panjáb Courts Act, 1877, for the purpose of trying all or any specified class of suits of the nature referred to in that section, with all or any of the powers of any Court constituted under that Act, XVII of 1877.

and possessing appellate powers,

has heard and determined an appeal in any such suit, the decision shall not be deemed invalid or be deprived of any of its effect by reason of the objection that the officer who heard the appeal was not authorized to hear the same.

Validation of appellate decisions by successors of certain officers exercising appellate powers.

2. When any officer controlling a settlement of land-revenue has heard and determined an appeal and his decision thereon would, if it had been passed by his predecessor in office, be deemed valid, the decision shall not be deemed invalid or deprived of any of its effect by reason of the objection that the officer who heard the appeal was not expressly authorized to hear the same.

Validation of decisions pronounced beyond local limits of jurisdiction.

3. When the decision of an officer making or controlling a settlement of land-revenue would be deemed valid if it had been passed by him within a specified local area, it shall not be deemed invalid or deprived of any of its effect by reason of the objection that at the time when he passed it he was beyond the limits of that local area.

STATEMENT OF OBJECTS AND REASONS.

BEFORE the passing of Act XIX of 1865 it was the practice to invest Settlement-officers in the Panjáb with judicial powers in land-suits both original and appellate. All such suits were heard on the Revenue side of the Courts, and the final appeal lay to the Financial Commissioner. The settlements of some districts were under the control of a Settlement Commissioner, and in those districts appeals from judicial decisions passed by Settlement-officers lay to him instead of to the Commissioner of the division.

Sections 21 and 22 of Act XIX of 1865 made provision for the continuance of this practice in districts under settlement, if Government should so direct; and the former section provided for special officers being invested with the powers of a Commissioner, Deputy Commissioner, Assistant Commissioner or Tahsíldár "for the purpose of deciding suits in respect to land, or the rent, revenue or produce of land." No reference was made to the appellate jurisdiction of such officers, but as the latter section expressly provided for the final appeal to the Financial Commissioner, and as the civil powers of a Commissioner or Deputy Commissioner included the power to hear appeals, it was probably thought that officers invested with these powers would have authority to hear appeals, and it was not foreseen that the words "for the purpose of deciding suits" might give rise to any difficulty in this respect, the appeal being regarded as simply one stage in the suit.

2. In a recent criminal judgment (published as No. 36 in *Panjáb Record* for '882), it has been held by a Division Bench of the Chief Court that power to decide suits did not include power to hear appeals, and that section 21 of Act XIX of 1865 therefore did not enable the Government to invest Settlement-officers with the powers of a Deputy Commissioner for the purpose of hearing appeals. Many Settlement-officers, Assistant Settlement-officers and Extra Assistant Settlement-officers had been invested with the powers of Deputy Commissioners under that section, and the Settlement Commissioner had been invested with the powers of a Commissioner in a number of districts, and all these officers had heard and determined appeals in land-suits in the exercise of those powers. There are thus thousands of appellate decisions, many of which have been confirmed or modified on final appeal, on the validity of which a doubt has been cast by the decision of the Chief Court in Criminal Judgment No. 36 of 1882.

3. In the case of the Settlement Commissioner, there may be room for a further doubt. Like the Commissioner of a division, he had a number of districts under him, for the purpose of controlling settlement-operations, and he exercised the powers of Commissioner both for this purpose and for the decision of appeals in land-suits, either at his head-quarters, or in any district the settlement of which was under his control in which he might be on tour at the time. Appeals were thus frequently disposed of by him in districts other than that in which the land was situate, and it is desirable to put the regularity of this beyond dispute.

4. Act XVII of 1877 repealed Act XIX of 1865, and section 49, which took the place of sections 21 and 22 of the latter Act, empowered the Local Government, by notification in the official Gazette, to invest any officer making or controlling a settlement of land-revenue with all or any of the powers of any Court constituted under the Act, for the purpose of trying all or any specified class of suits and appeals relating to land, or the rent, revenue or produce of such land arising in the area declared to be under settlement. It is under this section that the Financial Commissioner, Settlement Commissioner and Settlement-officers of all classes have since been invested with civil judicial powers, and it expressly enables Government to confer the power to try appeals upon such officers. But it is clear that a notification under this section would not invest any officer with the power of trying appeals in such cases, unless that power was conferred in express terms. In the districts of Ludiána and Jalandhar, Settlement-officers and Extra

Assistant Settlement-officers have been invested with the powers of a Deputy Commissioner for the trial of certain classes of suits relating to land, or the rent, revenue or produce of such land, by notifications published under this section (specified in the margin), which did not expressly empower them to hear appeals. Similarly, the Settlement Commissioner was invested with the powers of Commissioner, and the Financial Commissioner with the powers of the Chief Court, for the trial of certain classes of suits in the Ludiána district, by notifications Nos. 217 and 220, dated 25th February, 1879, and No. 1237, dated 17th November, 1879, but these notifications did not expressly empower them to hear appeals. The effect of these omissions was overlooked, and in consequence many appeals have been heard and decided by the officers so empowered to try suits.

Ludiána, No. 216, dated 25th February, 1879; No. 1237, dated 17th November, 1879.

Jalandhar, No. 161, dated 18th February, 1880.

The last of these notifications was afterwards amended by notification No. 35, dated 20th February, 1883, which added the words "and appeals" after "suits".

5. Doubts also exist in connection with the civil appellate jurisdiction of certain of the Financial Commissioners. The powers conferred under Act XIX of 1865, section 22, were, in accordance with what was understood to be the intention of that section, conferred upon the Financial Commissioner as such, and it was therefore thought unnecessary, while that Act remained in force, to invest by any express order the successors in office of the Financial Commissioner, upon whom these powers were conferred, with the like powers. But the language of section 49 of Act XVII of 1877 evidently contemplated that all powers conferred under that section should be conferred upon specified officers; and, though section 2 provided that powers conferred under Act XIX of 1865 should, as far as may be, be deemed to have been conferred under Act XVII of 1877, it may be argued that this would only save the powers then held by officers under the former Act, and would not give similar powers to their successors in office. However, the opposite view was acted on, for on the death of the Financial Commissioner in 1879, the new Financial Commissioner continued to hear appeals, though no notification had been issued investing him with power to do so; and a new Settlement Commissioner having been appointed at the same time, he was instructed to regard his predecessor's powers as attached to the office and not as personal, and no notification empowering him to hear appeals such as his predecessor had been empowered to hear was issued.

6. Many titles depend on the appellate decisions of officers whose jurisdiction is, owing to the circumstances above stated, liable to be called in question, and, though it is not known that the jurisdiction of these officers has been impugned, either in appeal from their decisions or by suits brought to recover the property affected by those decisions, it is desirable to prevent the risk of the objection of want of jurisdiction being hereafter raised.

The present Bill has accordingly been framed to declare the validity of such decisions, and prevent the litigation which might arise from their being supposed to have been passed without jurisdiction.

C. P. ILBERT.

The 9th January, 1884.

D. FITZPATRICK,

Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 26, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th January, 1884, and was referred to a Select Committee :—

No. 1 OF 1884.

A Bill to amend and provide for the extension of the Northern India Takkavi Act, 1879.

WHEREAS it is expedient to amend the Northern India Takkavi Act, 1879 and provide for its extension to any part of British India; It is hereby enacted as follows :— X of 1879.

[Act X of 1879, s 1].

1. (*1*) This Act may be called the Agriculturists' Loans Act, 1884; and

Short title.

Commencement.

(*2*) It shall come into force on the first day of June, 1884.

2. (*1*) This section and section 3 extend to the whole of British India.

Local extent.

(*2*) The rest of this Act extends in the first instance only to the territories respectively administered by the Lieutenant-Governors of the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces, Assam and Ajmer.

(*3*) But any other Local Government may, from time to time, by notification in the official Gazette, extend the rest of this Act to the whole or any part of the territories under its administration.

3. (*1*) On and from the day on which this Act comes into force, the Northern India Takkávi Act, 1879, shall, except as regards the recovery of advances made before this Act comes into force, be repealed. X of 1879.

Repeal of Act X of 1879.

(*2*) All rules made under that Act shall be deemed to be made under this Act.

4. (*1*) The Local Government may, from time to time, with the previous sanction of the Governor General in Council, make rules as to loans to be made to owners and occupiers of arable land, for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Loans Act, 1883, but connected with agricultural objects. [Act X of 1879, s. 3]. XIX of 1883.

Power for Local Government to make rules.

(*2*) All such rules shall be published in the local official Gazette.

5. Every loan made in accordance with such rules, all interest (if any) chargeable thereon, and costs (if any) incurred in making or recovering the same, shall, when they become due, be recoverable from the person to whom the loan was made, or from any person who has become surety for the repayment thereof, as if they were arrears of land-revenue due by the person to whom the loan was made or by his surety. [Cf. Act X of 1879, s. 4].

Recovery of loans.

6. When a loan is made under this Act to the members of a village-community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed by each of them and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute. [Cf. Act XIX of 1883, s. 9.]

Liability of joint borrowers as among themselves.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to repeal the Northern India Takkáví Act and re-enact it with certain amendments which appear to be desirable.

First.—The existing law makes no provision for the recovery as an arrear of land-revenue of *interest* on loans made under it and of the costs (if any) incurred by the Government in making loans. Section 3 of Act X of 1879 only provides for the recovery in this way of the principal sum advanced. Section 5 of the Bill supplies this omission by providing that interest and costs (if any) may be recovered as an arrear of land-revenue in the same manner as the principal.

Secondly.—Act X of 1879 extends only to certain limited areas, namely, the North-Western Provinces and Oudh, the Panjáb, the Central Provinces, Assam and Ajmer. At present, there is no law in force in Bengal or Coorg under which advances of the nature of those with which the Act deals can be made. There are provisions relating to such advances in the laws in force in Bombay, Madras and British Burma; but the Local Governments of Bombay and Madras are prepared to accept the extension of the Northern India Act to their provinces; and the Chief Commissioner of British Burma says that, if that Act is not extended to his province, it will be necessary to amend the law at present in force there in order to provide for the recovery of interest on advances. Provision has, therefore, been made in section 2 of the Bill empowering any Local Government, if it thinks fit, to extend the Act to the whole or any part of the territories under its administration.

Thirdly.—A new section (6) has, at the request of the Panjáb Government, been inserted in the Bill, similar to section 9 of the Land Improvement Loans Act, 1883, recognizing the principle of making loans on the joint responsibility of village-communities.

Lastly.—As the term "Takkáví" is, it is understood, applied in some parts of India to advances of the nature of those to which the Land Improvement Loans Act relates, it is proposed to alter the present title and to stylo the new Act "the Agriculturists Loans Act."

S. C. BAYLEY.

The 7th January, 1884.

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th January 1884, and was referred to a Select Committee:—

No. 2 OF 1884.

A Bill for the validation of decisions passed on appeal by certain Settlement-officers in the Panjáb.

XIX of 1865. WHEREAS section 21 of the Panjáb Courts Act, 1865, provided that the Local Government might, with the previous sanction of the Governor General in Council, invest any special officer in any district in which a settlement of land-revenue might be in progress with the civil powers of a Commissioner, Deputy Commissioner, Assistant Commissioner or Tahsíldár, as defined in that Act, for the purpose of deciding suits with respect to land, or the rent, revenue or produce of land, such powers to be exercised on the Revenue side;

and whereas, under that section, the Local Government, with the previous sanction of the Governor General in Council, invested the Settlement Commissioner with the civil powers of a Commissioner, and invested certain Settlement-officers, Assistant Settlement-officers and Extra Assistant Settlement-officers with the civil powers of a Deputy Commissioner, for the purpose of deciding suits of the description hereinbefore mentioned in certain districts in which a settlement of land-revenue was in progress;

and whereas the officers so invested heard and determined appeals in such suits in the belief that they were duly empowered to hear and determine the same;

and whereas doubts have recently been raised as to whether those officers had power to hear and determine such appeals;

XVII of 1877. and whereas section 49 of the Panjáb Courts Act, 1877, provides that the Local Government may from time to time, by notification in the official Gazette, invest any officer making or controlling a settlement of land-revenue in any local area with all or any of the powers of any Court constituted under that Act, for the purpose of trying all or any specified class of suits and appeals relating to land, or the rent, revenue or produce of land, arising in that local area;

and whereas, by notifications published under that section, the Local Government invested the Financial Commissioner with the powers of the Chief Court, the Settlement Commissioner with the powers of a Commissioner, and certain Settlement-officers and Extra Assistant Settlement-officers with the powers of a Deputy Commissioner, for the purpose of trying certain classes of suits relating to land, or the rent, revenue and produce of land, in certain local areas in which a settlement of land-revenue was in progress, but no power to hear appeals was expressly given by those notifications;

and whereas the officers named in those notifications have heard and determined appeals in the belief that they were duly empowered by those notifications to hear and determine the same;

and whereas, where certain officers making or controlling settlements of land-revenue have exercised certain appellate powers, their successors in office have continued to exercise the like powers under the belief that they were entitled by mere operation of law to exercise the same;

and whereas it is apprehended that certain officers making or controlling settlements of land-revenue have exercised their judicial powers when at places beyond the local limits of their jurisdiction;

and whereas, for the quieting of titles and the avoidance of litigation, it is expedient that the decisions passed on appeal by officers engaged in making or controlling settlements in suits of the nature mentioned in section 21 or section 22 of the Panjáb Courts Act, 1865, and in section 49 of the Panjáb Courts Act, 1877, should not be impeached for want of authority in such officers, and that the validity of such decisions should be affirmed; XIX of 1865. XVII of 1877.

It is hereby enacted as follows:—

Validation of appellate decisions passed by officers invested with powers under section 21 of Act XIX of 1865 or section 49 of Act XVII of 1877.

1. (*a*) When any special officer invested under section 21 of the Panjáb Courts Act, 1865, with the civil powers of a Commissioner or Deputy Commissioner as defined in that Act for the purpose of deciding suits with respect to land, or the rent, revenue or produce of land, or XIX of 1865.

(*b*) when any officer making or controlling a settlement of land-revenue in any local area and invested under section 49 of the Panjáb Courts Act, 1877, for the purpose of trying all or any specified class of suits of the nature referred to in that section, with all or any of the powers of any Court constituted under that Act, XVII of 1877

and possessing appellate powers,

has heard and determined an appeal in any such suit, the decision shall not be deemed invalid or be deprived of any of its effect by reason of the objection that the officer who heard the appeal was not authorized to hear the same.

Validation of appellate decisions by successors of certain officers exercising appellate powers.

2. When any officer controlling a settlement of land-revenue has heard and determined an appeal and his decision thereon would, if it had been passed by his predecessor in office, be deemed valid, the decision shall not be deemed invalid or deprived of any of its effect by reason of the objection that the officer who heard the appeal was not expressly authorized to hear the same.

Validation of decisions pronounced beyond local limits of jurisdiction.

3. When the decision of an officer making or controlling a settlement of land-revenue would be deemed valid if it had been passed by him within a specified local area, it shall not be deemed invalid or deprived of any of its effect by reason of the objection that at the time when he passed it he was beyond the limits of that local area.

STATEMENT OF OBJECTS AND REASONS.

BEFORE the passing of Act XIX of 1865 it was the practice to invest Settlement-officers in the Panjáb with judicial powers in land-suits both original and appellate. All such suits were heard on the Revenue side of the Courts, and the final appeal lay to the Financial Commissioner. The settlements of some districts were under the control of a Settlement Commissioner, and in those districts appeals from judicial decisions passed by Settlement-officers lay to him instead of to the Commissioner of the division.

Sections 21 and 22 of Act XIX of 1865 made provision for the continuance of this practice in districts under settlement, if Government should so direct; and the former section provided for special officers being invested with the powers of a Commissioner, Deputy Commissioner, Assistant Commissioner or Tahsíldár "for the purpose of deciding suits in respect to land, or the rent, revenue or produce of land." No reference was made to the appellate jurisdiction of such officers, but as the latter section expressly provided for the final appeal to the Financial Commissioner, and as the civil powers of a Commissioner or Deputy Commissioner included the power to hear appeals, it was probably thought that officers invested with these powers would have authority to hear appeals, and it was not foreseen that the words "for the purpose of deciding suits" might give rise to any difficulty in this respect, the appeal being regarded as simply one stage in the suit.

2. In a recent criminal judgment (published as No. 36 in *Panjáb Record* for 1882), it has been held by a Division Bench of the Chief Court that power to decide suits did not include power to hear appeals, and that section 21 of Act XIX of 1865 therefore did not enable the Government to invest Settlement-officers with the powers of a Deputy Commissioner for the purpose of hearing appeals. Many Settlement-officers, Assistant Settlement-officers and Extra Assistant Settlement-officers had been invested with the powers of Deputy Commissioners under that section, and the Settlement Commissioner had been invested with the powers of a Commissioner in a number of districts, and all these officers had heard and determined appeals in land-suits in the exercise of those powers. There are thus thousands of appellate decisions, many of which have been confirmed or modified on final appeal, on the validity of which a doubt has been cast by the decision of the Chief Court in Criminal Judgment No. 36 of 1882.

3. In the case of the Settlement Commissioner, there may be room for a further doubt. Like the Commissioner of a division, he had a number of districts under him, for the purpose of controlling settlement-operations, and he exercised the powers of Commissioner both for this purpose and for the decision of appeals in land-suits, either at his head-quarters, or in any district the settlement of which was under his control in which he might be on tour at the time. Appeals were thus frequently disposed of by him in districts other than that in which the land was situate, and it is desirable to put the regularity of this beyond dispute.

4. Act XVII of 1877 repealed Act XIX of 1865, and section 49, which took the place of sections 21 and 22 of the latter Act, empowered the Local Government, by notification in the official Gazette, to invest any officer making or controlling a settlement of land-revenue with all or any of the powers of any Court constituted under the Act, for the purpose of trying all or any specified class of suits and appeals relating to land, or the rent, revenue or produce of such land arising in the area declared to be under settlement. It is under this section that the Financial Commissioner, Settlement Commissioner and Settlement-officers of all classes have since been invested with civil judicial powers, and it expressly enables Government to confer the power to try appeals upon such officers. But it is clear that a notification under this section would not invest any officer with the power of trying appeals in such cases, unless that power was conferred in express terms. In the districts of Ludiána and Jalandhar, Settlement-officers and Extra

Ludiána, No. 216, dated 25th February, 1879; No. 1237, dated 17th November, 1879.
Jalandhar, No. 161, dated 18th February, 1880.
The last of these notifications was afterwards amended by notification No. 35, dated 20th February, 1883, which added the words "and appeals" after "suits".

Assistant Settlement-officers have been invested with the powers of a Deputy Commissioner for the trial of certain classes of suits relating to land, or the rent, revenue or produce of such land, by notifications published under this section (specified in the margin), which did not expressly empower them to hear appeals. Similarly, the Settlement Commissioner was invested with the powers of Commissioner, and the Financial Commissioner with the powers of the Chief Court, for the trial of certain classes of suits in the Ludiána district, by notifications Nos. 217 and 220, dated 25th February, 1879, and No. 1237, dated 17th November, 1879, but these notifications did not expressly empower them to hear appeals. The effect of these omissions was overlooked, and in consequence many appeals have been heard and decided by the officers so empowered to try suits.

5. Doubts also exist in connection with the civil appellate jurisdiction of certain of the Financial Commissioners. The powers conferred under Act XIX of 1865, section 22, were, in accordance with what was understood to be the intention of that section, conferred upon the Financial Commissioner as such, and it was therefore thought unnecessary, while that Act remained in force, to invest by any express order the successors in office of the Financial Commissioner, upon whom these powers were conferred, with the like powers. But the language of section 49 of Act XVII of 1877 evidently contemplated that all powers conferred under that section should be conferred upon specified officers; and, though section 2 provided that powers conferred under Act XIX of 1865 should, as far as may be, be deemed to have been conferred under Act XVII of 1877, it may be argued that this would only save the powers then held by officers under the former Act, and would not give similar powers to their successors in office. However, the opposite view was acted on, for on the death of the Financial Commissioner in 1879, the new Financial Commissioner continued to hear appeals, though no notification had been issued investing him with power to do so; and a new Settlement Commissioner having been appointed at the same time, he was instructed to regard his predecessor's powers as attached to the office and not as personal, and no notification empowering him to hear appeals such as his predecessor had been empowered to hear was issued.

6. Many titles depend on the appellate decisions of officers whose jurisdiction is, owing to the circumstances above stated, liable to be called in question, and, though it is not known that the jurisdiction of these officers has been impugned, either in appeal from their decisions or by suits brought to recover the property affected by those decisions, it is desirable to prevent the risk of the objection of want of jurisdiction being hereafter raised.

The present Bill has accordingly been framed to declare the validity of such decisions, and prevent the litigation which might arise from their being supposed to have been passed without jurisdiction.

C. P. ILBERT.

The 9th January, 1884.

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 2, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th January, 1884, and was referred to a Select Committee :—

No. 1 OF 1884.

A Bill to amend and provide for the extension of the Northern India Takkavi Act, 1879.

WHEREAS it is expedient to amend the Northern India Takkavi Act, 1879 and provide for its extension to any part of British India; It is hereby enacted as follows :— X of 1879.

[Act X of 1879, s. 1].

1. (*1*) This Act may be called the Agriculturists' Loans Act, 1884; and

Short title.

Commencement.

(*2*) It shall come into force on the first day of June, 1884.

2. (*1*) This section and section 3 extend to the whole of British India.

Local extent.

(*2*) The rest of this Act extends in the first instance only to the territories respectively administered by the Lieutenant-Governors of the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces, Assam and Ajmer.

(*3*) But any other Local Government may, from time to time, by notification in the official Gazette, extend the rest of this Act to the whole or any part of the territories under its administration.

3. (*1*) On and from the day on which this Act comes into force, the Northern India Takkávi Act, 1879, shall, except as regards the recovery of advances made before this Act comes into force, be repealed. X of 1879.

Repeal of Act X of 1879.

(*2*) All rules made under that Act shall be deemed to be made under this Act.

4. (*1*) The Local Government may, from time to time, with the previous sanction of the Governor General in Council, make rules as to loans to be made to owners and occupiers of arable land, for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Loans Act, 1883, but connected with agricultural objects. [Act X of 1879, s. 3].

Power for Local Government to make rules.

XIX of 1883.

(*2*) All such rules shall be published in the local official Gazette.

5. Every loan made in accordance with such rules, all interest (if any) chargeable thereon, and costs (if any) incurred in making or recovering the same, shall, when they become due, be recoverable from the person to whom the loan was made, or from any person who has become surety for the repayment thereof, as if they were arrears of land-revenue due by the person to whom the loan was made or by his surety. [Cf. Act X of 1879, s. 4].

Recovery of loans.

6. When a loan is made under this Act to the members of a village-community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed by each of them and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute. [Cf. Act XIX of 1883, s. 9.]

Liability of joint borrowers as among themselves.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to repeal the Northern India Takkáví Act and re-enact it with certain amendments which appear to be desirable.

First.—The existing law makes no provision for the recovery as an arrear of land-revenue of *interest* on loans made under it and of the costs (if any) incurred by the Government in making loans. Section 3 of Act X of 1879 only provides for the recovery in this way of the principal sum advanced. Section 5 of the Bill supplies this omission by providing that interest and costs (if any) may be recovered as an arrear of land-revenue in the same manner as the principal.

Secondly.—Act X of 1879 extends only to certain limited areas, namely, the North-Western Provinces and Oudh, the Panjáb, the Central Provinces, Assam and Ajmer. At present, there is no law in force in Bengal or Coorg under which advances of the nature of those with which the Act deals can be made. There are provisions relating to such advances in the laws in force in Bombay, Madras and British Burma; but the Local Governments of Bombay and Madras are prepared to accept the extension of the Northern India Act to their provinces; and the Chief Commissioner of British Burma says that, if that Act is not extended to his province, it will be necessary to amend the law at present in force there in order to provide for the recovery of interest on advances. Provision has, therefore, been made in section 2 of the Bill empowering any Local Government, if it thinks fit, to extend the Act to the whole or any part of the territories under its administration.

Thirdly.—A new section (6) has, at the request of the Panjáb Government, been inserted in the Bill, similar to section 9 of the Land Improvement Loans Act, 1883, recognizing the principle of making loans on the joint responsibility of village-communities.

Lastly.—As the term "Takkáví" is, it is understood, applied in some parts of India to advances of the nature of those to which the Land Improvement Loans Act relates, it is proposed to alter the present title and to style the new Act "the Agriculturists Loans Act."

S. C. BAYLEY.

The 7th January, 1884.

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th January 1884, and was referred to a Select Committee:—

No. 2 OF 1884.

A Bill for the validation of decisions passed on appeal by certain Settlement-officers in the Panjáb.

XIX of 1865. WHEREAS section 21 of the Panjáb Courts Act, 1865, provided that the Local Government might, with the previous sanction of the Governor General in Council, invest any special officer in any district in which a settlement of land-revenue might be in progress with the civil powers of a Commissioner, Deputy Commissioner, Assistant Commissioner or Tahsíldár, as defined in that Act, for the purpose of deciding suits with respect to land, or the rent, revenue or produce of land, such powers to be exercised on the Revenue side;

and whereas, under that section, the Local Government, with the previous sanction of the Governor General in Council, invested the Settlement Commissioner with the civil powers of a Commissioner, and invested certain Settlement-officers, Assistant Settlement-officers and Extra Assistant Settlement-officers with the civil powers of a Deputy Commissioner, for the purpose of deciding suits of the description hereinbefore mentioned in certain districts in which a settlement of land-revenue was in progress;

and whereas the officers so invested heard and determined appeals in such suits in the belief that they were duly empowered to hear and determine the same;

and whereas doubts have recently been raised as to whether those officers had power to hear and determine such appeals;

XVII of 1877. and whereas section 49 of the Panjáb Courts Act, 1877, provides that the Local Government may from time to time, by notification in the official Gazette, invest any officer making or controlling a settlement of land-revenue in any local area with all or any of the powers of any Court constituted under that Act, for the purpose of trying all or any specified class of suits and appeals relating to land, or the rent, revenue or produce of land, arising in that local area;

and whereas, by notifications published under that section, the Local Government invested the Financial Commissioner with the powers of the Chief Court, the Settlement Commissioner with the powers of a Commissioner, and certain Settlement-officers and Extra Assistant Settlement-officers with the powers of a Deputy Commissioner, for the purpose of trying certain classes of suits relating to land, or the rent, revenue and produce of land, in certain local areas in which a settlement of land-revenue was in progress, but no power to hear appeals was expressly given by those notifications;

and whereas the officers named in those notifications have heard and determined appeals in the belief that they were duly empowered by those notifications to hear and determine the same;

and whereas, where certain officers making or controlling settlements of land-revenue have exercised certain appellate powers, their successors in office have continued to exercise the like powers under the belief that they were entitled by mere operation of law to exercise the same;

and whereas it is apprehended that certain officers making or controlling settlements of land-revenue have exercised their judicial powers when at places beyond the local limits of their jurisdiction;

and whereas, for the quieting of titles and the avoidance of litigation, it is expedient that the decisions passed on appeal by officers engaged in making or controlling settlements in suits of the nature mentioned in section 21 or section 22 of the Panjáb Courts Act, 1865, and in section 49 of the Panjáb Courts Act, 1877, should not be impeached for want of authority in such officers, and that the validity of such decisions should be affirmed; XIX of 1865. XVII of 1877.

It is hereby enacted as follows:—

Validation of appellate decisions passed by officers invested with powers under section 21 of Act XIX of 1865 or section 49 of Act XVII of 1877.

1. (*a*) When any special officer invested under section 21 of the Panjáb Courts Act, 1865, with the civil powers of a Commissioner or Deputy Commissioner as defined in that Act for the purpose of deciding suits with respect to land, or the rent, revenue or produce of land, or XIX of 1865.

(*b*) when any officer making or controlling a settlement of land-revenue in any local area and invested under section 49 of the Panjáb Courts Act, 1877, for the purpose of trying all or any specified class of suits of the nature referred to in that section, with all or any of the powers of any Court constituted under that Act, XVII of 1877

and possessing appellate powers,

has heard and determined an appeal in any such suit, the decision shall not be deemed invalid or be deprived of any of its effect by reason of the objection that the officer who heard the appeal was not authorized to hear the same.

Validation of appellate decisions by successors of certain officers exercising appellate powers.

2. When any officer controlling a settlement of land-revenue has heard and determined an appeal and his decision thereon would, if it had been passed by his predecessor in office, be deemed valid, the decision shall not be deemed invalid or deprived of any of its effect by reason of the objection that the officer who heard the appeal was not expressly authorized to hear the same.

Validation of decisions pronounced beyond local limits of jurisdiction.

3. When the decision of an officer making or controlling a settlement of land-revenue would be deemed valid if it had been passed by him within a specified local area, it shall not be deemed invalid or deprived of any of its effect by reason of the objection that at the time when he passed it he was beyond the limits of that local area.

STATEMENT OF OBJECTS AND REASONS.

BEFORE the passing of Act XIX of 1865 it was the practice to invest Settlement-officers in the Panjáb with judicial powers in land-suits both original and appellate. All such suits were heard on the Revenue side of the Courts, and the final appeal lay to the Financial Commissioner. The settlements of some districts were under the control of a Settlement Commissioner, and in those districts appeals from judicial decisions passed by Settlement-officers lay to him instead of to the Commissioner of the division.

Sections 21 and 22 of Act XIX of 1865 made provision for the continuance of this practice in districts under settlement, if Government should so direct; and the former section provided for special officers being invested with the powers of a Commissioner, Deputy Commissioner, Assistant Commissioner or Tahsíldár "for the purpose of deciding suits in respect to land, or the rent, revenue or produce of land." No reference was made to the appellate jurisdiction of such officers, but as the latter section expressly provided for the final appeal to the Financial Commissioner, and as the civil powers of a Commissioner or Deputy Commissioner included the power to hear appeals, it was probably thought that officers invested with these powers would have authority to hear appeals, and it was not foreseen that the words "for the purpose of deciding suits" might give rise to any difficulty in this respect, the appeal being regarded as simply one stage in the suit.

2. In a recent criminal judgment (published as No. 36 in *Panjáb Record* for 1882), it has been held by a Division Bench of the Chief Court that power to decide suits did not include power to hear appeals, and that section 21 of Act XIX of 1865 therefore did not enable the Government to invest Settlement-officers with the powers of a Deputy Commissioner for the purpose of hearing appeals. Many Settlement-officers, Assistant Settlement-officers and Extra Assistant Settlement-officers had been invested with the powers of Deputy Commissioners under that section, and the Settlement Commissioner had been invested with the powers of a Commissioner in a number of districts, and all these officers had heard and determined appeals in land-suits in the exercise of those powers. There are thus thousands of appellate decisions, many of which have been confirmed or modified on final appeal, on the validity of which a doubt has been cast by the decision of the Chief Court in Criminal Judgment No. 36 of 1882.

3. In the case of the Settlement Commissioner, there may be room for a further doubt. Like the Commissioner of a division, he had a number of districts under him, for the purpose of controlling settlement-operations, and he exercised the powers of Commissioner both for this purpose and for the decision of appeals in land-suits, either at his head-quarters, or in any district the settlement of which was under his control in which he might be on tour at the time. Appeals were thus frequently disposed of by him in districts other than that in which the land was situate, and it is desirable to put the regularity of this beyond dispute.

4. Act XVII of 1877 repealed Act XIX of 1865, and section 49, which took the place of sections 21 and 22 of the latter Act, empowered the Local Government, by notification in the official Gazette, to invest any officer making or controlling a settlement of land-revenue with all or any of the powers of any Court constituted under the Act, for the purpose of trying all or any specified class of suits and appeals relating to land, or the rent, revenue or produce of such land arising in the area declared to be under settlement. It is under this section that the Financial Commissioner, Settlement Commissioner and Settlement-officers of all classes have since been invested with civil judicial powers, and it expressly enables Government to confer the power to try appeals upon such officers. But it is clear that a notification under this section would not invest any officer with the power of trying appeals in such cases, unless that power was conferred in express terms. In the districts of Ludiána and Jalandhar, Settlement-officers and Extra

Ludiána, No. 216, dated 25th February, 1879; No. 1237, dated 17th November, 1879.
Jalandhar, No. 161, dated 18th February, 1880.
The last of these notifications was afterwards amended by notification No. 35, dated 20th February, 1883, which added the words "and appeals" after "suits."

Assistant Settlement-officers have been invested with the powers of a Deputy Commissioner for the trial of certain classes of suits relating to land, or the rent, revenue or produce of such land, by notifications published under this section (specified in the margin), which did not expressly empower them to hear appeals. Similarly, the Settlement Commissioner was invested with the powers of Commissioner, and the Financial Commissioner with the powers of the Chief Court, for the trial of certain classes of suits in the Ludiána district, by notifications Nos. 217 and 220, dated 25th February, 1879, and No. 1237, dated 17th November, 1879, but these notifications did not expressly empower them to hear appeals. The effect of these omissions was overlooked, and in consequence many appeals have been heard and decided by the officers so empowered to try suits.

5. Doubts also exist in connection with the civil appellate jurisdiction of certain of the Financial Commissioners. The powers conferred under Act XIX of 1865, section 22, were, in accordance with what was understood to be the intention of that section, conferred upon the Financial Commissioner as such, and it was therefore thought unnecessary, while that Act remained in force, to invest by any express order the successors in office of the Financial Commissioner, upon whom these powers were conferred, with the like powers. But the language of section 49 of Act XVII of 1877 evidently contemplated that all powers conferred under that section should be conferred upon specified officers; and, though section 2 provided that powers conferred under Act XIX of 1865 should, as far as may be, be deemed to have been conferred under Act XVII of 1877, it may be argued that this would only save the powers then held by officers under the former Act, and would not give similar powers to their successors in office. However, the opposite view was acted on, for on the death of the Financial Commissioner in 1879, the new Financial Commissioner continued to hear appeals, though no notification had been issued investing him with power to do so; and a new Settlement Commissioner having been appointed at the same time, he was instructed to regard his predecessor's powers as attached to the office and not as personal, and no notification empowering him to hear appeals such as his predecessor had been empowered to hear was issued.

6. Many titles depend on the appellate decisions of officers whose jurisdiction is, owing to the circumstances above stated, liable to be called in question, and, though it is not known that the jurisdiction of these officers has been impugned, either in appeal from their decisions or by suits brought to recover the property affected by those decisions, it is desirable to prevent the risk of the objection of want of jurisdiction being hereafter raised.

The present Bill has accordingly been framed to declare the validity of such decisions, and prevent the litigation which might arise from their being supposed to have been passed without jurisdiction.

C. P. ILBERT.

The 9th January, 1884.

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 8, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 7th March, 1884, and was referred to a Select Committee :—

No. 3 OF 1884.

A Bill to amend the Negotiable Instruments Act, 1881.

WHEREAS it is expedient to amend the Negotiable Instruments Act, 1881, in manner hereinafter appearing ; It is hereby enacted as follows :— XXVI of 1881.

Short title.

1. This Act may be called the Negotiable Instruments Act, 1884.

XXVI of 1881.

Act XXVI of 1881, section 108, in part, repealed.

2. In the Negotiable Instruments Act, 1881, section 108, the second sentence is repealed.

Amendment of section 109 of same Act.

3. In the same Act, section 109,

(*a*) for the words "in the presence of a notary public subscribe the bill with his own hand and" the following shall be substituted, namely :—"by writing on the bill under his hand," and

(*b*) the last twelve words are repealed.

Amendment of section 113 of same Act.

4. In the same Act, section 113, after the words "the person so paying," the words "or his agent in that behalf" shall be inserted.

New chapter added to same Act.

5. After Chapter XVI of the same Act, the following shall be inserted :—

"CHAPTER XVII.

"NOTARIES PUBLIC.

Power to appoint notaries public.

"138. The Governor General in Council may, from time to time, by notification in the official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove any person so appointed.

Power to make rules for notaries public.

"139. The Governor General in Council may, from time to time, by notification in the official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries."

STATEMENT OF OBJECTS AND REASONS.

SECTIONS 108 and 109 of the Negotiable Instruments Act, 1881, make it essential to the validity of an acceptance for honour that the person accepting shall go through certain formalities in the presence of a notary.

It appears that the English Bills of Exchange Bill which became law in 1882 originally contained similar provisions, but they were cut out in Committee.

Two of the leading banks in India brought to the notice of the Government some time ago that the imposition of such a condition led to serious inconvenience in the case of certain classes of bills, inasmuch as persons who were willing to become responsible for them as acceptors refused to go before a notary.

2. Section 113 of the Negotiable Instruments Act makes a notarial act essential to a payment for honour, as section 68 of the English Bills of Exchange Act does, but with this difference that while the English Act allows of the requisite declaration before the notary being made either by the payer for honour or his agent in that behalf, the Indian Act may be construed as allowing it to be made only by the payer himself. This also is likely to give rise to difficulty.

3. A number of banks and other commercial authorities throughout British India, having been consulted on these points, are almost unanimous in thinking that an amendment of the Act is required, and accordingly the present Bill has been prepared with a view to bringing the law of India in the particulars referred to as nearly as may be into conformity with the law of England.

4. The opportunity has been taken to supply certain defects in the Negotiable Instruments Act regarding the appointment and control of notaries public, and to make it clear that a person may be appointed a notary by name or by virtue of an office held by him; that he may be appointed for a limited area and may be removed from his office; and further that rules may be made for the guidance and control of notaries appointed under the Act and may, among other matters, fix the fees payable to such notaries.

C. P. ILBERT.

The 29th February, 1884.

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 15, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 7th March, 1884, and was referred to a Select Committee:—

No. 3 OF 1884.

A Bill to amend the Negotiable Instruments Act, 1881.

WHEREAS it is expedient to amend the Negotiable Instruments Act, 1881, in manner hereinafter appearing; It is hereby enacted as follows:— XXVI of 1881.

Short title. 1. This Act may be called the Negotiable Instruments Act, 1884.

XXVI of 1882. 2. In the Negotiable Instruments Act, 1881, section 108, the second sentence is repealed.

Act XXVI of 1881, section 108, in part, repealed.

Amendment of section 109 of same Act. 3. In the same Act, section 109,

(*a*) for the words "in the presence of a notary public subscribe the bill with his own hand and" the following shall be substituted, namely:—"by writing on the bill under his hand," and

(*b*) the last twelve words are repealed.

Amendment of section 113 of same Act. 4. In the same Act, section 113, after the words "the person so paying," the words "or his agent in that behalf" shall be inserted.

New chapter added to same Act. 5. After Chapter XVI of the same Act, the following shall be inserted:—

"CHAPTER XVII.

"NOTARIES PUBLIC.

Power to appoint notaries public. "138. The Governor General in Council may, from time to time, by notification in the official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove any person so appointed.

Power to make rules for notaries public. "139. The Governor General in Council may, from time to time, by notification in the official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may by such rules (among other matters), fix the fees payable to such notaries."

STATEMENT OF OBJECTS AND REASONS.

SECTIONS 108 and 109 of the Negotiable Instruments Act, 1881, make it essential to the validity of an acceptance for honour that the person accepting shall go through certain formalities in the presence of a notary.

It appears that the English Bills of Exchange Bill which became law in 1882 originally contained similar provisions, but they were cut out in Committee.

Two of the leading banks in India brought to the notice of the Government some time ago that the imposition of such a condition led to serious inconvenience in the case of certain classes of bills, inasmuch as persons who were willing to become responsible for them as acceptors refused to go before a notary.

2. Section 113 of the Negotiable Instruments Act makes a notarial act essential to a payment for honour, as section 68 of the English Bills of Exchange Act does, but with this difference that while the English Act allows of the requisite declaration before the notary being made either by the payer for honour or his agent in that behalf; the Indian Act may be construed as allowing it to be made only by the payer himself. This also is likely to give rise to difficulty.

3. A number of banks and other commercial authorities throughout British India, having been consulted on these points, are almost unanimous in thinking that an amendment of the Act is required, and accordingly the present Bill has been prepared with a view to bringing the law of India in the particulars referred to as nearly as may be into conformity with the law of England.

4. The opportunity has been taken to supply certain defects in the Negotiable Instruments Act regarding the appointment and control of notaries public, and to make it clear that a person may be appointed a notary by name or by virtue of an office held by him; that he may be appointed for a limited area and may be removed from his office; and further that rules may be made for the guidance and control of notaries appointed under the Act and may, among other matters, fix the fees payable to such notaries

The 29th February, 1884.

C. P. ILBERT.

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 22, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 7th March, 1884, and was referred to a Select Committee:—

No. 3 OF 1884.

A Bill to amend the Negotiable Instruments Act, 1881.

WHEREAS it is expedient to amend the Negotiable Instruments Act, 1881, in manner hereinafter appearing; It is hereby enacted as follows:— XXVI of 1881.

Short title. 1. This Act may be called the Negotiable Instruments Act, 1884.

XXVI of 1881. Act XXVI of 1881, section 108, in part, repealed. 2. In the Negotiable Instruments Act, 1881, section 108, the second sentence is repealed.

Amendment of section 109 of same Act. 3. In the same Act, section 109,

(*a*) for the words "in the presence of a notary public subscribe the bill with his own hand and" the following shall be substituted, namely:—"by writing on the bill under his hand," and

(*b*) the last twelve words are repealed.

Amendment of section 113 of same Act. 4. In the same Act, section 113, after the words "the person so paying," the words "or his agent in that behalf" shall be inserted.

New chapter added to same Act. 5. After Chapter XVI of the same Act, the following shall be inserted:—

"CHAPTER XVII.

"NOTARIES PUBLIC.

Power to appoint notaries public. "138. The Governor General in Council may, from time to time, by notification in the official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove any person so appointed.

Power to make rules for notaries public. "139. The Governor General in Council may, from time to time, by notification in the official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries."

STATEMENT OF OBJECTS AND REASONS.

SECTIONS 108 and 109 of the Negotiable Instruments Act, 1881, make it essential to the validity of an acceptance for honour that the person accepting shall go through certain formalities in the presence of a notary.

It appears that the English Bills of Exchange Bill which became law in 1882 originally contained similar provisions, but they were cut out in Committee.

Two of the leading banks in India brought to the notice of the Government some time ago that the imposition of such a condition led to serious inconvenience in the case of certain classes of bills, inasmuch as persons who were willing to become responsible for them as acceptors refused to go before a notary.

2. Section 113 of the Negotiable Instruments Act makes a notarial act essential to a payment for honour, as section 68 of the English Bills of Exchange Act does, but with this difference that while the English Act allows of the requisite declaration before the notary being made either by the payer for honour or his agent in that behalf, the Indian Act may be construed as allowing it to be made only by the payer himself. This also is likely to give rise to difficulty.

3. A number of banks and other commercial authorities throughout British India, having been consulted on these points, are almost unanimous in thinking that an amendment of the Act is required, and accordingly the present Bill has been prepared with a view to bringing the law of India in the particulars referred to as nearly as may be into conformity with the law of England.

4. The opportunity has been taken to supply certain defects in the Negotiable Instruments Act regarding the appointment and control of notaries public, and to make it clear that a person may be appointed a notary by name or by virtue of an office held by him; that he may be appointed for a limited area and may be removed from his office; and further that rules may be made for the guidance and control of notaries appointed under the Act and may, among other matters, fix the fees payable to such notaries

The 29th February, 1884.

C. P. ILBERT.

D. FITZPATRICK,
Secretary to the Government of India.

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PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 14th March, 1884:—

WE, the undersigned Members of the Select Committee to which the Bengal Tenancy Bill was referred, have considered the Bill and the papers noted in the schedule hereto annexed, and have the honour to submit this preliminary Report.

2. We have recast the Bill, and have embodied in the revised Bill such alterations as commended themselves to the majority of us, but there are various points on which we consider that further information is requisite, and we recommend that the Bill as altered by us should be republished for further criticism, in the interval that will elapse before we resume our labours in November.

3. The present Report being only a preliminary one, several members of the Committee wish it to be recorded that they postpone the expression of their opinions on particular points until the final Report is submitted to the Council. It must also be understood that generally in referring to the decisions of the Committee we state the views of the majority.

CHAPTER II.

CLASSES OF TENANTS.

4. This chapter has been introduced for the purpose of describing the different classes of tenants with which the Bill deals. It will be seen from it that raiyats at fixed rates are now treated as a distinct class instead of being, as in the original Bill, a sub-class of tenure-holders. It will further be observed that the term "non-occupancy-raiyats" has been substituted for "ordinary raiyats," which latter term has been justly objected to as a misnomer Lastly, it will be seen that tenants of homestead or Bastu land, which is not part of an occupancy-holding, have no place in the revised Bill. It may be that on further consideration it will be found desirable to introduce into the Bill some provisions relating to tenants of this class, but at present we have not before us the information requisite for dealing with the questions involved. It is clear that, owing to the various conditions which attach to the holdings of such tenants in different parts of the country, Chapter VII of the original Bill would, if it were to be retained, need amendment in certain particulars. But we are unable to formulate this amendment, pending the receipt of further information, which we hope will be supplied by the Local Government.

5. In the section which relates to the distinction between tenure-holders and raiyats, we have endeavoured to describe, rather than to define, each class. Whilst recognising the expediency of laying down rules for the guidance of Courts in dealing with cases which lie near the border-line between the two classes, we retain the opinion that any attempt to frame a rigid definition of either class would tend to create, rather than to remove, difficulties.

CHAPTER III.

TENURE-HOLDERS.

6. The sections (14-17) of the original Bill relating to the right to hold at fixed rates have been removed to Chapter VIII of the revised Bill, and will be more particularly referred to when we come to speak of that chapter. Section 20 of the original Bill, which contained a special provision relating to lands in temporarily-settled districts, has been transferred to the supplemental chapter.

7. We have made a considerable alteration in section 7, sub-section (3), which lays down the rules to be followed by the Court in enhancing the rent of a tenure in cases where the matter is not provided for by contract or custom. It is now simply enacted that the Court shall not leave the tenure-holder less than 10 per cent. of the profits, and in fixing the rent shall have regard to the circumstances under which the tenure was created, to the improvements made by the holder of it, and to the cost and risks of collection. We have left untouched the provisions that the enhanced rent should not be more than double the previous rent and that it should hold good for 10 years.

8. The special provisions of the original Bill relating to patní tenures, with the exception of the definition section (36), which has been transferred to the preliminary chapter, and the section (42) regarding summary sale, which has been placed in the chapter relating to that subject, have been included in this chapter.

9. Of the alterations we have made in the sub-division of this chapter relating to registration of transfers and successions, the following only seem to call for notice, namely :—

(1) the addition to sub-section (1) of section 15 of a proviso allowing a landlord to refuse to register a transfer of a tenure if any rent is in arrear ;

(2) the abolition of the additional fee imposed by section 27 (2), clause (b), of the original Bill as a penalty for delay in applying for registration, and the insertion of a clause fixing the fee at Rs. 2 where no rent is payable by the tenure-holder [section 15 (2)] ;

(3) the addition to section 18 of a sub-section providing that a person becoming entitled to a tenure by transfer or succession shall not be entitled to recover rent by suit, distraint or other proceeding until the transfer or succession has been registered or a notice of it has been served on the landlord ; and

(4) the amendment of the section (now section 21) relating to the granting of copies of entries in the register, so that the fee for every copy granted shall be such amount, not less than one anna or more than one rupee, as the Local Government may fix.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

10. In the matters of transfer and succession we have assimilated the conditions of the settled-raiyat holding at fixed rates to those of tenure-holders. It was suggested that this class of raiyats should be sub-divided into (*a*) those holding under a registered lease or judicially declared title, and (*b*) those holding at fixed rates under the statutory presumption, the former being assimilated to tenure-holders and the latter to raiyats with a right of occupancy ; but the majority of us were unable to accept this proposal.

CHAPTER V.

OCCUPANCY-RAIYATS.

11. The main lines of this chapter, so far as regards the acquisition of the status of a raiyat and the right of occupancy, remain unchanged, and we have only to mention such alterations in the details as appear to us to call for notice.

Our attention has been drawn to the inconvenience which may arise in certain exceptionally large estates, such as those of the Mahárájá of Burdwan and others, from the status of settled-raiyat holding good over the whole estate. We desire to learn if the Government of Bengal consider that in these exceptional estates any known fiscal or administrative area can be advantageously substituted for the area of an estate.

12. Another matter connected with the definition of "estate" for the special objects of this chapter, to which we desire to draw attention, is the provision in section 27 (6) to the effect that where a partition has taken place "since the first day of January, 1853" the parent estate shall, notwithstanding the partition, be regarded as a single estate. The date mentioned was chosen because it was understood that it might reasonably be expected that from about that time complete records of partitions would be forthcoming ; but the particular point of time to which we should go back is of course open to further consideration, and accordingly we have directed that the words fixing it shall be shown in italics.

13. We have, at the instance of the Government of Bengal, inserted in section 26 (definition of settled-raiyat) a sub-section (2) providing that when it is proved or admitted that a person holds land as a raiyat, it shall be, as between him and his landlord, presumed for the purpose of the section, until the contrary is shown, that he has for twelve years held the land or some part of it as a raiyat. Such a presumption appears to us to be warranted by the existing state of things in the Lower Provinces, and, while it tends to simplify litigation, it is one which the landlord ought to have no difficulty in rebutting in any case in which it does not hold good.

14. We have [section 26 (6)] retained in substance the provision of the original Bill under which a person does not lose his status as a settled-raiyat merely by the accident of his being out of possession of a holding in the village or estate for any time not exceeding one year, but have added to it a clause [sub-section (7)] to the effect that if he recovers possession of any land under section 96 (as to which see *infra* paragraph 66) he shall be deemed to have continued to be a settled-raiyat notwithstanding his having been out of possession for more than a year.

15. The chapter relating to merger having been omitted from the Bill for reasons to be explained further on, we have thought it desirable, in order to prevent any misapprehension, to insert in this chapter a section (28), providing that, if the landlord of a raiyat having a right of occupancy acquires the interest of the raiyat by purchase or otherwise, the occupancy-right shall cease to exist, but that nothing in this provision shall prejudicially affect the rights of any third person.

16. We have omitted section 48 of the original Bill, which provided for the acquisition of the occupancy-right by grant, and have substituted for section 49 of that Bill relating to the acquisition of the occupancy-right in lands of the classes comprised under the term khámár as there defined, a section (30) simply providing that nothing in the chapter shall confer a right of occupancy in lands of those classes where such lands are held under a lease for a term of years or under a lease from year to year.

17. We have, in affirming that the raiyat may use the land in any manner that does not render it unfit for the purposes of the tenancy, added [section 31, clause (*a*)] that he shall not cut down trees thereon in contravention of any local custom.

18. In the division which relates to the landlord's right of pre-emption, and which is now headed "restrictions on transfer", we have [in section 32 (4)] provided that the landlord, if he elects to purchase, must tender the price within one month from the date on which it is agreed on or fixed, and we have also inserted words to allow the raiyat, if his landlord claims to purchase, the option of keeping the land.

19. We have further inserted in the same section a sub-section (5) providing that if the raiyat attempts to sell in contravention of the provisions of the section the sale shall be void as against his landlord.

20. We have omitted section 55 of the original Bill, which gave the landlord a right of pre-emption when the occupancy-right is bequeathed.

21. As regards gifts of the occupancy-right, we believe that the great majority of such gifts would be either of the nature of bequests or of merely fictitious transactions covering sales. It is only in the case of gifts of this latter class that the landlord seems to us to stand in need of any protection, and we think that sufficient protection will be afforded him by requiring that a gift must be made by a registered instrument, and that a copy of the instrument shall be forthwith served on the landlord so as to give him an opportunity of questioning the transaction if he sees any ground for believing that it is not *bonâ fide*. We have, however, exempted from this requirement gifts by Muhammadans to persons within the prohibited degrees, as such gifts are usually substitutes for testamentary dispositions (section 35).

22. Lastly, we have added a section (36) restricting the right of pre-emption to proprietors and permanent tenure-holders and other tenure-holders authorized by them to exercise it, as it seems to us that the exercise of such a right by a temporary tenure-holder, otherwise than with the permission of a superior landlord having a permanent interest in the land, would give rise to difficulties and complications which it is desirable to avoid.

23. Great objection has been taken to section 56 of the original Bill, which provided that when a landlord acquires the occupancy-right, any raiyat afterwards taking the land shall have an occupancy-right in it : this section we have omitted.

24. We have also omitted section 57, which conferred the status of a settled-raiyat on every person inheriting an occupancy-right in land. The object of this latter section seems to us to be sufficiently secured by section 26, (4).

25. The next division of this chapter, headed "restrictions on sub-letting", is new. It is based on certain proposals put forward by the Government of Bengal, and having for their objects to discourage the purchase of the occupancy-right by non-agricultural speculators and to protect the sub-lessee of a raiyat. This latter object, we may observe, could be only in part carried out by the provisions inserted here. Further provisions for securing it will be found in Chapter VII, relating to under-raiyats, of which we shall presently have to speak.

26. The main enactments in this sub-division of the chapter are—

1st.—That if the portion of his holding sub-let by an occupancy-raiyat exceeds half the holding, he shall, on being registered in a public register as a tenure-holder under an Act, which the Local Government propose to introduce into the Bengal Council for this purpose, be deemed to have become a tenure-holder, the result of which will be that his sub-lessees will become raiyats, with an actual or potential right of occupancy (section 37).

2nd.—That if a raiyat sub-lets his holding or any part of it the sub-lease shall not be valid for a period exceeding seven years (section 38).

These enactments are qualified by certain provisions, the most important of which are—

1st.—That they shall not apply to the case of a raiyat who is compelled to sub-let by being disabled from cultivation by age, sex, disease, accident or temporary absence from home in certain cases, and

2nd.—That when a raiyat is converted into a tenure-holder, as above-mentioned, his rent shall be liable to enhancement on the same terms and subject to the same

conditions as if he were an occupancy-raiyat, and thus the position of his landlord will in this respect remain unaffected.

27. These provisions gave rise to considerable difference of opinion, and we are not insensible of the inconvenience arising from allowing a change to be created in the legal relations of a raiyat, both towards his landlord on the one hand and towards his own sub-tenants on the other, as the result of his own acts; a change, moreover, which must be determined by an arbitrary line difficult to ascertain, and complicated by the numerous exceptions which the circumstances of the cultivators obviously demand. There seemed, however, to the majority of us to be no better way of placing restrictions on sub-letting (a practice which it is admittedly impossible to prohibit) than by rendering the sub-letting raiyat liable to the summary sale for arrears, which is to be made applicable to tenures, and at the same time enabling his sub-tenants to acquire rights of occupancy. These provisions illustrate the extreme difficulty of placing any substantial check on the practice of sub-letting, when it has once grown up. It will be observed that the converted tenure-holder, while liable to enhancement as an occupancy-raiyat, is in all other respects treated as a tenure-holder, and acquires with the liability to summary sale other incidents of tenure-holders, such as exemption from the pre-emption clauses, but that none of these provisions will come into operation until such time as he is registered. It was felt that to throw on the Courts the duty of ascertaining in a simple rent suit all the complicated conditions, which are connoted by his conversion, would be intolerable, and that the difficulty could only be met by the Local Government ascertaining and registering them. This it has undertaken to do.

28. The alterations which we have made in the provisions relating to the enhancement of the rent of occupancy-raiyats are considerable, both as regards form and substance.

We have removed the provisions relating to enhancement by means of a table of rates to a separate chapter following that relating to the record-of-rights and settlement of rents, and deal here only with enhancement in the ordinary way by contract or by a suit in Court.

29. As the Bill now stands amended the rent of an occupancy-raiyat cannot be enhanced by contract unless the contract is registered, and the following rules will apply to every such contract (section 41):—

(1).—The rent must not be enhanced so as to exceed by more than four annas in the rupee (25 per cent.) the rent previously payable by the raiyat.

(2).—The contract must fix the rent for a term of at least seven years.

(3).—If the enhanced rent exceeds by more than two annas in the rupee (12½ per cent.) the previous rent, the contract must fix the rent for a term of at least fifteen years.

(4).—The registering officer must, before registering a contract under this section, ascertain that the contract is in accordance with the provisions of the Act, and that the raiyat entering into it acts as a free agent. It will be observed that under the revised section the registering officer, instead of being required to approve a contract and to satisfy himself that it is fair and equitable, is now merely required to satisfy himself that it is in accordance with the provisions of the Act.

30. Further, it is provided (section 42) that where land, which has been previously held by a tenant at a money-rent, is let to a settled-raiyat of the village or estate in which it is situate, that raiyat shall not be bound to pay for it any rent higher than that which was paid for it by the previous tenant, except in pursuance of a registered contract, and that the rules just referred to shall apply to every such contract.

31. As regards enhancement by suit our object has been, while laying down rules which will be substantially just to both landlords and tenants, to devise a system which would avoid those elaborate and difficult inquiries, the necessity for which has made the present enhancement law an almost useless instrument in the hands of the landlords.

With this view we have specified the grounds on which an enhancement suit can be instituted, as follows (section 43):—

(*a*).—That the rate of rent paid by the raiyat is below the prevailing rate payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity.

(*b*).—That there has been a rise in the average prices of staple food crops in the locality or at the usual markets.

(*c*).—That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(*d*).—That the productive powers of the land held by the raiyat have been increased by fluvial action.

32. An enquiry had shown that an authoritative Table of Rates could be prepared by the Government of Bengal only for exceptional tracts, and no other general method has been submitted to us for placing before the Courts the information with respect to productive powers of the land which would enable them to apply the rules for enhancement on the ground of increase in those powers. But the zamíndárs objected to the total elimination of this as a legal ground of enhancement, and, as it was part of the old law, it has been retained. Enhancements on this ground when the increase is caused by the landlord's improvement will be facilitated by the system of enquiry and registration provided for hereafter; but enhancements on the ground of increase of productive powers caused by fluvial action will still, we fear, be liable to the same difficulty, caused by the absence of any proof of the former productive powers of the soil, as has rendered this ground of enhancement futile in past years.

33. On the other hand enhancement on the ground of prices would be greatly facilitated by the preparation of authoritative price-lists by the Local Government. It should be explained that the price-lists of staple food crops are to be taken simply as indicating a general rise or fall in prices, and without any reference to the particular crop grown on the land, the rent of which is in dispute; and our intention is that the price-lists should be worked out very much on the principle on which the commutation of tithes according to average prices is worked out in England as explained at pages 250 *et seq* of Mr. Justice Field's Digest.

34. It has been urged that, in applying the proportion rule in the case of prices, some deduction should be made to cover the effect of these increased prices on the cost of cultivation. We are however content for the present to leave the protection of the raiyat in this respect to the other restrictions on enhancements, especially to section 48, which provides that the Court shall not in any case decree an enhancement, which appears under the circumstances of the case to be unfair or inequitable. But the point will receive further consideration when the alterations made in this chapter have been subjected to public criticism.

35. The difficulty which, as we have explained, stands in the way of enhancement on the ground of an increase in the productive powers of the land, applies with no less force to the proposal to limit the maximum enhanced rent to one-fifth of the average annual gross produce. The majority of the Committee were of opinion that it would be almost impossible to ascertain in each instance the average annual gross produce expressed in staple crops, and weighty objections have also been taken to the principle underlying that proposal. We have accordingly struck out the provision to the above effect contained in section 75 (*d*) of the original Bill. As a set-off against this we have increased the stringency of another limitation contained in the original Bill by providing that, when rent is enhanced on the first ground mentioned above, the enhancement shall not amount to more than 8 annas in the rupee (50 per cent.), and that, when it is enhanced on the second or fourth of those grounds, the enhancement shall not amount to more than 4 annas in the rupee (25 per cent.), and by providing, as above stated, that the Court shall not in any case decree an enhancement which appears under the circumstances of the case to be unfair or inequitable (section 48).

36. In connection with enhancement up to the prevailing rate payable by occupancy-raiyats of the same class, we have in section 41 introduced a clause [(*c*)], based on section 20 of the North-Western Provinces Tenancy Act, providing for cases in which local custom may make it necessary to take into consideration the caste of a raiyat.

37. As regards enhancement on the ground of an improvement made by the landlord, we have laid down no hard-and-fast rule, but have merely provided [section 46 (*b*)] that in determining the enhancement to be allowed the Court shall have regard to—

(i) the increase in the value of the produce caused by the improvement,

(ii) the cost of the improvement;

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

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

And, in order to avoid perplexing inquiries into matters long past, we have provided [section 46 (*a*)] that the Court shall not grant an enhancement unless the improvement has been registered, that is to say, registered in accordance with the rules which are laid down in Chapter IX, and which, as will be seen, are so framed as to secure that all requisite information will be duly placed on record.

38. The leading rule adopted by us for enhancement on the ground of increase of productive power arising from fluvial action is suggested by that proposed by the Rent Commission, and is to the effect that the landlord shall not have more than half the value of the net increase in the produce of the land [section 47 (*c*)].

39. Section 78 of the original Bill, which limited the right to bring successive enhancement suits, has now (section 50) been restricted to suits on the ground that the rent paid is below the prevailing rate, and suits on the ground of an increase of prices; but the restriction will now apply to cases in which a suit for enhancement has been dismissed on the merits as well as to cases in which enhancement has been decreed, and the period which must elapse between successive enhancements has been extended from ten to fifteen years.

40. The grounds on which a suit for reduction of rent may be brought are in the amended Bill (section 51) limited to the following:—

(*a*) that the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand or other like calamity, and

(*b*) that there has been a fall in the average prices of staple food crops in the locality.

In either case the Court is to direct such reduction of the rent as it thinks fair and equitable.

41. Section 52 of the amended Bill, which provides for the preparation of authoritative price-lists, differs from the corresponding section of the original Bill in certain particulars; but the only alteration which we need notice here is that the new section empowers the Local Government to direct price-lists to be prepared for past years as well as for current years. Materials for such price-lists exist in the statements of prices published regularly by the Bengal

Government during the past 12 years, and, if it be possible to correct these lists and render them a trustworthy record of local prices, the work of the Courts in enhancing rents on the ground of a rise in price will be greatly simplified.

42. Section 80 of the original Bill, which provided for the enhancement of the rent of pasture lands, has been omitted, as it is understood that the letting of land to individual tenants for grazing purposes is so very rare that no special rules are needed to regulate it.

43. Section 81 of the original Bill, which prescribed a limit to the amount of the rent payable in kind by an occupancy-tenant or varying with the crop, has likewise been omitted, because it was found that local usage on the point was exceedingly complicated, large deductions being usually made from the crop for various purposes before dividing it, and that to draw a hard-and-fast line would very probably mislead the Courts and have an injurious effect.

44. The section (53) providing for the commutation of rent payable in kind has been recast on the lines of section 16 of the Central Provinces Tenancy Act, 1883. As it now stands it admits of an application for commutation being made to certain officers, either by the landlord or the tenant, and empowers the officer to whom it is made to refuse it if it is opposed. Further, the new section allows a larger discretion than the original section in determining the amount of the money-rent to be paid. It merely provides that in making the determination the officer shall have regard to—

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

(*b*) the average value of the rent actually received by the landlord during the preceding ten years.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

45. Section 89 of the original Bill provided that the non-occupancy-raiyat, or, as he was termed in that Bill, the "ordinary raiyat", should pay such rent as might be from time to time agreed on between him and his landlord, but subject to the provisions of section 119, which made five-sixteenths of the average annual value of gross produce the maximum of the rent. We now propose to abandon this maximum for the reasons which led us to abandon the corresponding maximum in the case of the enhancement of an occupancy-raiyat's rent, and the question accordingly arises whether any other restriction should be placed on contracts fixing the rent of a non-occupancy tenant. The majority of us are opposed to any such restriction, and accordingly the amended Bill leaves the parties free except in so far as it provides (section 57) that the rent shall not be enhanced after the raiyat has been admitted into occupation of the land, except by registered agreement or in the manner allowed by certain sections of the chapter to be presently noticed.

46. In section 58, which states the grounds on which a non-occupancy-raiyat is liable to be ejected, we have introduced a clause permitting him to be ejected, when he has for the first time been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired; but we have provided in the following section (59) that a suit for ejectment on this ground shall not be instituted unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

47. We have also decided to strike out the clause giving the non-occupancy-raiyat compensation for disturbance, but have provided in lieu thereof (section 60) that when an ejectment suit is brought against a non-occupancy-raiyat on the ground of his refusal to pay an enhanced rent, the Court shall fix a fair and equitable rent, and the raiyat shall have the option of holding on at that rent for a term of five years, after which he will be liable to be ejected on the same conditions as after the expiry of an initial lease, provided rights of occupancy have not accrued to him in the meantime.

CHAPTER VII.

UNDER-RAIYATS.

48. We have already (*supra* paragraphs 26 and 27) referred to the new provision introduced into the Bill which, by converting an occupancy-raiyat who sub-lets half his land into a tenure-holder, confers upon his sub-lessees the status and advantages of raiyats. The chapter

now under consideration provides a certain amount of protection to under-raiyats who are not entitled to the benefit of that provision.

Section 62 provides that the landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, namely:—

(*a*) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and

(*b*) in any other case—twenty-five per cent.

And section 63 provides that an under-raiyat shall not be liable to be ejected by his landlord, except at the end of an agricultural year, and after a written notice to quit has been served on him in the prescribed manner not less than six months before the expiration of that year.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

49. This chapter opens with the provisions relating to the right of tenure-holders and raiyats to hold at a fixed rent, which have been transferred from the opening of the original chapter relating to tenure-holders. The only change made in these provisions which seems to call for notice here is the addition of a clause to sub-section (2) of section 64, providing that, if an enactment should hereafter be passed requiring the registration of permanent tenures or of tenancies at fixed rates, the well-known presumption from twenty years' holding shall cease to apply to any tenancies which are not registered within the time fixed. The Local Government, we understand, propose shortly to introduce into the Bengal Council a Bill establishing a registration system of the nature just referred to, and, if that Bill becomes law, it will, we believe, with the aid of this clause, afford, so far at least as those classes of tenancies are concerned, the best remedy for the hardship which the landlords complain of as caused to them by the retention on the Statute Book of the presumption in question. The above presumption will also cease to apply when a record-of-rights has been prepared (see *infra* para. 77)

50. In section 66, (2), we have omitted the hard-and-fast rule laid down in the corresponding section (96) of the original Bill, that in calculating the addition to be made to the rent of a tenure on account of an addition to the area comprised in it, 30 per cent. should be allowed for profits, risk and cost of collection; and have merely provided that the Court shall have regard to the profits to which the tenure-holder is entitled in respect of the rent of his tenure.

51. In the section (67) relating to instalments of rent we have omitted as unnecessary the somewhat complicated proviso appended to section 98 of the original Bill.

52. We have in section 68 inserted a clause empowering the Local Government to try the experiment of making rules authorizing a tenant to pay his rent by postal money-order—a mode of payment which we think may in some cases be found convenient.

53. In sections 70 and 71 we have, instead of stereotyping the contents of the receipts and accounts to be furnished to tenants, given forms of these documents (in a schedule), and empowered the Local Government to alter them as convenience may require.

54. We have in section 70, (4), relaxed the stringency of the corresponding provision [section 100 (4)] of the original Bill by providing that a receipt not containing substantially the required particulars shall merely be "presumed until the contrary is shown" (instead of "deemed") to be an acquittance in full of all demands up to date.

55. It has been suggested that we should provide for applications for the withdrawal of rent deposited being exempted from Court-fees. We think such an exemption desirable, but it is within the power of the executive authorities to arrange for its being made, and we prefer to leave the matter in their hands.

56. We have, in the section (78) providing for ejectment from a non-transferable holding for arrears of rent, added a sub-section empowering the Court for special reasons to extend the period allowed for the payment of the rent.

57. We have empowered the Collector to depute an officer to divide or appraise the produce of a bhaoli holding, not only on the application of one of the parties concerned, but also in any case in which, in the opinion of the Magistrate of the District or Sub-Division, such action would be likely to prevent a breach of the peace [section 81 (2)].

58. We have further empowered the Collector in all cases to pass such order as he thinks just on the report of the officer deputed, and have provided that his order shall be final and be enforceable as a decree, unless he thinks fit to refer any question in dispute between the parties for the decision of a Civil Court [section 82 (4) and (5)]. This seems to us a simpler and more convenient procedure than leaving the parties to seek redress in the Civil Court in the first instance, as under the original Bill.

59. For section 117 of the original Bill we have substituted a section (set out in the margin) dealing comprehensively with the rights and liabilities of the landlord and tenant as to possession of the crop in cases where rent is taken by appraisement or division of the produce.

Rights and liabilities as to possession of crop.

83. (*1*) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(*2*) Where rent is taken by division of the produce, the tenant shall be entitled to exclusive possession of the whole produce until it is divided.

(*3*) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord, but shall not be entitled to remove any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time.

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

The penal provision of section 117 of the original Bill has not been reproduced here, as the matter is sufficiently provided for in the more general penalty clause now inserted in Chapter XIX. (section 220).

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

60. We have introduced a new section (88) providing that when a raiyat holds at a fixed rent or fixed rate of rent his landlord shall not be entitled to prevent him from making an improvement.

61. We have in section 89 (*3*) empowered the Collector to decide finally any question between an occupancy-raiyat and his landlord—

(*a*) as to the right of the raiyat to make an improvement, and

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

62. We have, in order to facilitate the decision of disputes regarding improvements, introduced a section (92) based on section 80 of the Central Provinces Tenancy Act, 1883, providing that a landlord or tenant, desiring to have any evidence recorded regarding an improvement which has been made, may apply to a Revenue-officer to record it, and that the record so made shall be admissible in subsequent proceedings between the parties. We have also as intimated (*supra* para. 37) introduced a section (91) providing for the registration of improvements made by landlords.

63. Section 129 (*d*) of the Bill as introduced provided that improvements made by a raiyat before the commencement of the Act should be deemed to have been made in accordance with the Act unless it was shown that the landlord forbade the raiyat to make the improvement and was ready to make it himself. For this we have substituted a sub-section [section 93 (*4*)] providing that improvements made by a raiyat between the 2nd day of March, 1883 (the day on which the Bill was introduced) and the commencement of the Act, shall be deemed to have been made in accordance with the Act. This prevents the section from applying retrospectively to any improvements made before the introduction of the Bill.

64. We have in section 94 somewhat enlarged the list of matters to be taken into consideration by the Court in estimating the compensation to be allowed for an improvement, the most important additions being the condition of the improvement with reference to its duration, and that "in the case of a reclamation or of the conversion of unirrigated into irrigated land" the Court shall have regard "to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent".

65. We have re-drafted the section (95) relating to surrender by a tenant, on the lines of section 33 of the Central Provinces Tenancy Act, 1883, and, in order to remove a misapprehension which appears to exist in some quarters, have added a sub-section (*5*) expressly providing that when a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

66. The difficulties which arise in cases where a raiyat to all appearance abandons his holding, but the landlord cannot be sure whether he can safely assume the holding to have been abandoned and let it to another tenant, we have attempted to meet by the section set out in the margin.

Abandonment.

96. (*1*) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(*2*) When a landlord enters under this section he shall cause a notice in the prescribed form to be published in such manner as the Local Government, by rule, directs, stating that he has treated the holding as abandoned and has entered on it accordingly.

(*3*) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may order recovery of possession on such terms, if any, with respect to compensation to persons injured as to the Court may seem just.

67. We have in section 99, which prohibits a landlord from measuring land more than once in ten years without the consent of the tenant or the permission of the Collector, allowed exceptions in the following cases, namely:—

(*a*) Where the area of the holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area.

(*b*) Where the area under cultivation is liable to vary from year to year, and the rent payable depends on the area under cultivation.

(*c*) Where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

68. In section 101, relating to the standard of measurement, we have introduced a sub-section empowering the Local Government after local inquiry to make rules declaring for any local area the standard or standards of measurement in use, and have provided that every such declaration shall be presumed to be correct until the contrary is shown. This, we think, will render section 138 of the original Bill unnecessary, and we have accordingly omitted it. Other provisions connected with measurement will be found in the chapter (X) concerning the record-of-rights.

69. In the division of this chapter relating to the appointment of a manager to act on behalf of co-owners of an estate or tenure we have added a section (109) empowering the High Court to make rules defining the powers and duties of managers.

70. We have omitted the section relating to merger. It was in our opinion open to serious objection, not only from the particular point of view of the framers of the present Bill, inasmuch as it allowed of the occupancy-right being retained in the hands of a landlord, his tenants being thus reduced to the position of under-raiyats, but also from a more general point of view, inasmuch as it conferred on individuals a large and arbitrary power to introduce, without any sufficient reason, a serious complication into the law of property, and one moreover which would be likely to serve as a cloak for fraud.

The immediate requirements of this Bill are, we think, sufficiently met by the section (28) which we have introduced into the occupancy chapter, and to which we have already referred (*supra* para. 15); and for the rest we are of opinion, after giving our best consideration to the views of the Hon'ble Mr. Justice Field, that the general question of merger is somewhat outside the proper scope of the present enactment.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

71. We have found it convenient to embody in a single chapter the two chapters of the original Bill relating to the above subjects, and to start with the record-of-rights, which is the simpler of the two.

72. The difficulty from the absence of a record occasionally felt, especially by a person who purchases an estate or tenure at a compulsory sale by auction, will, we think, be met by the new section (112) which admits, subject to certain conditions, of a record-of-rights being framed by Revenue-officer on the application of a proprietor or tenure-holder.

73. As regards the procedure in framing a record-of-rights, it will be observed that an important change has been made. Under Chapter XII of the original Bill the procedure was to be summary in all cases, whether there was or was not a dispute as to the entry which ought to be made in the record, and the result in all cases alike would have been merely an entry in the record, which would be *primâ facie* presumed to be correct, but would be open to be impugned in a Civil Court. In the amended Bill, on the contrary, a fuller opportunity is allowed for raising objections by a preliminary publication of the record, and if any entry, which it is proposed to make or which has been made, is called in question, the Revenue-officer is to inquire into the dispute according to the regular procedure of a Civil Court, and his decision is to have the force of a decree and to be appealable first to a special judge appointed to hear such appeals, and then, subject to the usual limitations of second appeals, to the High Court. Thus, in any case in which there is a dispute regarding an entry in the record, the question will be placed on the footing of a *res judicata*. Where, up to the time allowed after the preliminary publication of the record for preferring objections, no objection is made, the entry will be marked as undisputed, and as proposed in the original Bill will simply be presumed to be correct until the contrary is proved. We think that, having regard to the large scale on which those operations will be conducted, and to the impossibility of being sure that any sort of publication would bring home to every individual concerned the precise nature of the entries being made regarding him, we could not venture to give an undisputed entry any authority higher than that just mentioned.

74. The operation termed a "settlement of rents" includes, in addition to the preparation of a record-of-rights, the settlement of all such rents of occupancy-tenants and tenure-holders

holding otherwise than at fixed rents, as either the landlord or the tenant may apply to have settled.

The questions whether a rent is open to settlement, and, if so, the amount at which it should be settled, are of a complex nature depending on two very different sets of considerations. They depend in the first place on issues, relating to such matters as the existence of the tenancy, the extent of the land, the status of the tenant, the conditions under which he holds, &c., and possibly involving points of law, which could not satisfactorily be decided without the security afforded by an ultimate appeal to the highest judicial authority. They depend in the second place, on considerations of an economical nature, such as the state of prices prevailing at different periods, the effect of improvements, and so forth, which it is universally admitted cannot be adequately dealt with either in the first instance or on appeal except after local inquiry and by persons possessed of special technical knowledge. The problem before us has been how best to provide for the separation of these two elements, so that each may be dealt with, and finally dealt with, by those most competent to deal with it. The solution of this problem proposed in the original Bill will be seen on referring to section 160 of that Bill. The modification above described in the record-of-rights procedure, and especially the introduction of the special judge, who will doubtless always be an officer possessing a familiarity with the local agricultural system, in addition to judicial qualifications, has opened the way to what appears to us to be a more satisfactory solution. What we propose is that when a rent, which has been settled or which it is proposed to settle, is disputed, the dispute shall be dealt with by the Revenue-officer in the same way as a dispute regarding an entry in the record-of-rights, that an appeal on the whole question shall then lie to the special judge, and that his decision shall be final unless, in a second appeal in respect of one of the record-of-rights entries with reference to which the rent has been settled, the High Court alters the decision of the special judge. In this case the High Court may settle a new rent, but in so doing is to be guided by the other rents shown in the rent roll. In other words, there can be no second appeal to the High Court merely on the ground that the rent has been pitched too high or too low, but if a second appeal is preferred, as it may be, on the ground that the special judge, owing to some error on a point of law, has, for example, found the holding to comprise more land or less land than it actually does comprise, and the appellant succeeds, the High Court can, without altering the rates, reduce or increase the rent, as the case may be.

75. We have, in section 120, provided that, when a landlord is entitled under the foregoing sections to apply to have the rent of a holding settled, the rent of the holding, whether he applies and has it settled or it is merely ascertained, shall not be enhanced for fifteen years, except on the ground of an improvement made by the landlord or of an increase of the area of the holding.

76. Section 121, providing for the payment of expenses, has now been made applicable to the preparation of a record-of-rights as well as to the settlement of rents.

77. The only other provision of this chapter which appears to call for notice is the new section (122) which enacts that when the particulars of a tenancy have been recorded under the chapter, the well known presumption arising from twenty years' holding at a fixed rent shall cease to apply.

CHAPTER XI.

TABLES OF RATES.

78. We have been guided, in dealing with the subject of this chapter, by the views of the Government of Bengal. It appears from the enquiries that have been made that, owing to the great diversity of rates, it would in most parts of the country be impracticable to frame general tables of rates applicable to large tracts; but in special tracts the preparation of such tables may still, in the opinion of the Government of Bengal, be found a preferable alternative to the plan of a general settlement of rents by the Revenue-officer. In the latter case the Revenue-officer goes on the ground and himself decides all questions at issue. In the former case the Revenue-officer merely ascertains and records general facts which will serve as a guide to the Courts, whose business it will be to apply them to the circumstances of particular disputes brought before them. We have, therefore, retained the procedure with only a few minor alterations, but it will no longer be so important a feature as it was in the original Bill.

CHAPTER XII.

RECORD OF PROPRIETOR'S PRIVATE LANDS.

79. In dealing with the difficult question of khámár or zeraat land we have provided two alternative methods of procedure—

(*a*) that of survey and registration of such land by a Revenue-officer, by order of the Local Government;

(*b*) that of enquiry on the application of the individual landlord or tenant concerned.

The former procedure would apply to large areas where the question is important, the latter to disputes about particular plots of land. At the request of the Government of Bengal the two methods of procedure have been left equally applicable to any part of the country. We have made no distinction in the description of this land between Bengal and Bihár, but we have directed regard to be had in every case to local custom, and, while making it incumbent on the Revenue-officer to record certain lands as the proprietor's private land, have endeavoured to assist him by certain guiding rules in cases not clearly coming under these heads. The section is reproduced below.

Rules for determination of proprietor's private land.

138. (*1*) The Revenue-officer shall record as a proprietor's private land—

(*a*) land which is proved to have been cultivated as khámár, zeraat, sír, nij, nij-jot or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village-custom as proprietor's khámár, zeraat, sír, nij, nij-jote or kamat.

(*2*). In determining whether any other land ought to be recorded as a proprietor's private land the officer shall have regard to local custom and to the question whether the land was before the 2nd of March, 1883, specifically let as proprietor's private land, but shall presume that land is not a proprietor's private land until the contrary is shown.

(*3*). If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

CHAPTER XIII.

DISTRAINT.

80. The only changes made in this chapter to which it seems to us necessary to direct attention are the following :—

(*a*) Section 167 (*2*) of the original Bill, which made an application for distraint liable to the same Court-fee as a suit for the arrear of rent, has been omitted.

(*b*) Produce already stored has been exempted from distraint.

(*c*) The Court is empowered (section 141 (*3*) and (*4*)) to issue in certain cases an order prohibiting the removal of the produce pending the issue or execution of an order of distraint.

(*d*) It has been made clear (section 147) that crops which admit of being stored are not to be sold standing.

(*e*) Section 186 of the original Bill, which under certain circumstances imposed a penalty on persons on whose behalf an offence under section 185 is committed, has been omitted.

(*f*) On the other hand, express provision has been made in the first section of Chapter XIX for punishing abetment of the offences in question, and it has been made clear (section 158) that a person, whose property is distrained under cover of this chapter, but in a case to which it does not properly apply, has his remedy by suit against those who put the Court in motion.

(*g*) Section 187 of the original Bill, which empowered the Local Government to suspend the operation of the chapter, has been omitted.

CHAPTER XIV.

JUDICIAL PROCEDURE.

81. We have excluded suits for penalties and suits for the recovery of possession of land from the special procedure prescribed in sections 191-197 of the original Bill.

82. We have introduced at the opening of this chapter a section (159), modelled on a section in the Presidency-towns Small Cause Court Act, empowering the High Court, with the approval of the Local Government, to make rules declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant, or shall apply subject to modifications. We trust that as experience is acquired of the working of the Courts under the new Act it may be found possible to exercise this power so as to effect further simplifications in procedure.

83. For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent suits, we are unable to suggest anything of importance in this direction which would not involve a serious risk of failure of justice. In particular, while we are anxious to facilitate the service of summons and the proof of such service, we are unwilling to give any presumption of law against an absent defendant except on adequate proof of such service.

84. We have, however, with a view to avoiding, as far as possible, the complication and delay which arise from questions as to the landlord's title being raised in rent-suits, made an im-

portant amendment in the section (164) which requires a tenant, admitting that rent is due from him, but pleading that it is due not to the plaintiff but to a third person, to pay the amount into Court. Our object is to force the issue of disputed title to be raised separately and independently of the rent suit, and we have therefore provided that the Court shall, on the money being paid in, cause notice of the payment to be served on the third person, and unless he, within three months, institutes a separate suit against the plaintiff and obtains an order restraining the payment of the money, it will be paid out to the plaintiff on his application.

85. We have further added a section (165) providing that when a defendant in a rent suit admits that money is due from him to the plaintiff but disputes the amount, the Court shall, as a rule, require him to pay the amount admitted into Court.

86. We have provided (section 173) that when a plaintiff institutes a suit for the ejectment of a trespasser he may claim, as alternative relief, that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court.

87. Section 207 of the original Bill provided that a landlord or a tenant might institute a suit for the determination of the nature and incidents of the tenancy. We have (section 174) substituted the simpler and cheaper procedure of an application, and have empowered the Court, to which the application is made, to direct that a Revenue-officer shall make a local enquiry into any matter it thinks fit.

CHAPTER XVI.

SUMMARY SALE FOR ARREARS.

88. We have, in accordance with what we understand to be the desire of the landlords, maintained the provisions of the law relating to the sale of patní tenures substantially intact, amending them only in matters of form and minor detail. The provisions so amended have now been transferred from the Schedules to the body of the Bill, and form the first division of this chapter.

89. The second division of it consists of a single section enacting that, if provision is made by law for the registration in a public register of any tenures other than patní tenures, the provisions of the chapter shall, subject to such modifications as the Local Government may by rule prescribe, apply to those tenures.

CHAPTER XVII.

CONTRACT AND CUSTOM.

90. The important question as to the extent to which freedom of contract between landlord and tenant should be restricted has been disposed of, in so far as a few particular points are concerned, in the sections of the Bill relating to those points (see *e. g.* paras. 29, 30 and 48 *supra* on the subject of contracts fixing rent). But we have thought it convenient to collect in one section at the opening of this chapter most of the restrictions which, in the opinion of the majority of us, it is necessary to place on the power to contract out of the provisions of the law.

The matters which are thus placed beyond the reach of contract will be seen to be as follows:—

(*a*) The acquisition of the status of settled-raiyat and of the occupancy-right (sections 24, 25 and 26).
(*b*) The incidents of the occupancy-right specified in section 31.
(*c*) The occupancy-raiyat's right to demand a reduction of rent under section 51.
(*d*) The right of either landlord or tenant to demand a commutation of a produce-rent under section 53.
(*e*) The protection afforded by the Bill to a non-occupancy-raiyat or an under-raiyat from ejectment except on specified grounds (sections 58, 59, 60 and 63).
(*f*) The right of a tenant to a reduction of rent on account of a diminution of the area of his holding (section 66).
(*g*) The right of a raiyat to make improvements and claim compensation for them (sections 88, 89, 90 and 93).
(*h*) The protection afforded to all tenants against ejectment except in execution of a decree (section 98).

91. With a view to encouraging permanent mukarrarí leases we have inserted in this chapter a new section (211) providing that nothing in the Act shall be deemed to prevent a landlord in a permanently-settled estate from granting a permanent mukarrarí lease on any terms agreed on between him and his tenant.

92. It has been admitted throughout our discussions that lands held on reclamation-lease, chur or dearah lands, and lands taken under the customs known as *utbundi* and *hal-hasili* must be treated exceptionally, and the three following sections of this chapter are intended to make such special provision regarding them as appears to us to be necessary.

93. Section 212 provides that nothing in the Act shall affect any contract for the reclamation of waste-land.

94. Section 213 provides that a raiyat holding chur or dearah land shall not acquire a right of occupancy in the land until he has held it for twelve continuous years, and that until he acquires the right of occupancy he shall be liable to pay whatever rent is agreed on between him and his landlord, but that the Court may upon the application of either party declare that the land has ceased to be chur or dearah land, and thereupon the provisions of the Act shall apply to it.

95. Lastly, section 214 enacts that nothing in the Act shall affect the conditions, customary or otherwise, under which land is held on either of the systems known as the *utbundi* and *hal-hasili* systems.

96. As already stated (paragraph 4) we have omitted Chapter VII of the original Bill, which was intended to provide for the case of a raiyat holding his homestead otherwise than as a part of his holding as a raiyat. As, however, the absence of any mention of such tenancies in the Bill might give rise to misapprehension, we have thought it well to insert a section (216) expressly providing that their incidents will be regulated by local custom.

CHAPTER XVIII.

LIMITATION.

97. We consider that a moderately short period of limitation should be fixed for the recovery by an occupancy-raiyat of land comprised in his holding, and, following the precedent presented by section 81 of the Central Provinces Tenancy Act, 1881, we have fixed the period at two years from the date on which he is ejected, adding a proviso to guard against the revival of causes of action already barred.

CHAPTER XIX.

SUPPLEMENTAL.

98. We have somewhat amplified the provisions of section 221, which empowers a landlord to act through his agent, and in order to remove a misapprehension which, notwithstanding the definition of "landlord" contained in the Bill, we have found to exist in some quarters, we have added a section (222) to make it clear that, when two or more persons are joint landlords, they must act together or through an agent appointed by them jointly.

99. In the course of our discussions various points have been raised with which we felt that we were unable to deal adequately without further information than that contained in the papers before us. On some of these points we should be glad to receive the advice both of the Local Government and of the High Court.

The principal questions are as follows:—

(1) Whether, with reference especially to landlord's improvements, it is desirable to empower Revenue-officers to arrange for the cutting of irrigation channels, the distribution of water and the payment of compensation, and, if so, what form such provisions should take.
(2) What modifications it may be desirable to make, whether by rules or otherwise, in the Code of Civil Procedure, with a view to expedite the trial of rent suits; and in particular whether it is desirable that landlords should be empowered to institute, by means of a single plaint, suits for arrears against a number of raiyats holding independently of each other.
(3) Whether any provision can safely be enacted restricting the right to claim a re-trial when a decree has been given *ex parte*. We are aware that a judge is in no way bound to admit a re-trial unless he is satisfied that the summons failed to reach the defendant or that he was prevented by some sufficient cause from appearing; but the representations made to us are to the effect that the due service of the summons is systematically denied, and that the Courts too readily accept the plea, thus encouraging tactics the only object of which is to interpose delay and to involve the landlord in unnecessary expense in recovering his dues.

The proposal before us was that *ex parte* suits should not be re-tried except upon the defendant depositing the amount decreed, but we were unwilling to adopt this proposal on the information before us and desired that it should be referred for the consideration of the Hon'ble Judges of the High Court.

(4) A somewhat similar suggestion which has been made to us is that a defendant in a suit for arrears should not be allowed to appeal from a decree passed against him except on depositing the amount of the decree. On this suggestion, too, we should be glad to have the opinion of the Judges.

(5) A further point, and on this we desire to have the opinion of the Local Government, is whether the summary sale procedure can be applied to those independent taluqs the revenue of which was settled direct with Government, though the holders pay it through the zamíndár. These tenures apparently find no place in the Government registers, and it was proposed that the modified *patní* procedure should be applied to them.

(6) A similar proposal was made to render this procedure applicable to the recovery of arrears of Road Cess and Public Works Cess from rent-free tenure-holders. We decided to refer this point also to the Local Government.

(7) The necessity for further information respecting the conditions on which bastu or homestead land is held has already been noticed (*supra* para. 4).

(8) We are also anxious to be informed if the saving of customary conditions which we have specifically applied to *utbandi* and *hal-hasili* tenures should be extended to similar tenures under other names, and also if any special saving is necessary in regard to the special tenures under which land is held in the Chittagong division.

(9) Again, we desire to be informed whether it would be possible to specify, for the purpose of exemption from the pre-emption sections, any such transferable occupancy-rights as those in guzashta and gora holdings.

(10) Finally, we desire that the Government of Bengal may be consulted as to the possibility of improving the accuracy of the price-lists which have been published during the past twelve years, and the probable effect of basing a system of enhancement of rent mainly on these prices.

100. The publication ordered by the Council has been made, as follows:—

Gazette.	*In English.* *Date.*
Gazette of India	3rd, 10th and 17th March, 1883.
Calcutta Gazette	7th, 14th and 21st March, 1883.

Province.	*In the Vernaculars.* *Language.*	*Date.*
Bengal	Bengali	24th April, 1883.
	Hindi	4th May, 1884.
	Uriya	17th May, 1883.

101. As we have already intimated, we are of opinion that the Bill as now amended should be republished.

S. C. BAYLEY.
RIVERS THOMPSON.
C. P. ILBERT.
G. H. P. EVANS.
J. W. QUINTON.
T. W. GIBBON.*
AMÍR ALÍ.
W. W. HUNTER.
H. REYNOLDS.*

I sign this report as a fair statement of the results of the deliberations of the Committee, but as I am opposed to the leading principles of the Bill and to many details, I record a separate dissent.

KRISTODÁS PÁL.

I am against the principles of the Bill *in toto*. I sign this report subject to the conditions mentioned by Hon'ble Raí Kristodás Pál, and only because I believe I am bound to sign it according to the rules.

DARBHANGÁ.†

The 14th March, 1884.

* Subject to reservation on some points.

† The Hon'ble the Mahárájá of Darbhangá has intimated his intention to send a minute of dissent, but as it has not been received in time for publication with this Report, it will be published separately.

SCHEDULE.

Office Memorandum by Officiating Under-Secretary to the Government of India, Revenue and Agricultural Department, No. 484-116 R., dated 1st May, 1883, and enclosures [Papers No. 1].
From Under-Secretary to Government, Bengal, No. 1827-648 L. R., dated 13th July, 1883, and enclosures [Papers No. 2].
From Officiating Secretary to Government, Bengal, No. 1876-669 L. R., dated 18th July, 1883, and enclosures [Papers No. 3].
From Officiating Secretary to Government, Bengal, No. 1928-694 L. R., dated 24th July, 1883, and enclosures [Papers No. 4].
From Officiating Secretary to Government, Bengal, No. 2179-787 L. R., dated 13th August, 1883, and enclosures [Papers No. 5].
From Under-Secretary to Government, Bengal, No. 586 T. R., dated 24th August, 1883. and enclosures [Papers No. 6].
From Under-Secretary to Government, Bengal, No. 686 T. R., dated 3rd September, 1883, and enclosures [Papers No. 7].
Notes by Hon'ble T. M. Gibbon [Papers No. 8].
Memorial of Landholders of Eastern Bengal, dated 14th September, 1883, with notes [Paper No. 9].
From Rájá Promatha Natha Bahádúr of Dighapatia, No. 21, dated 20th September, 1883 [Paper No. 10].
From Under-Secretary to Government, Bengal, No. 822 T. R., dated 15th September, 1883, and enclosures [Papers No. 11].
From Officiating Secretary to Government, Bengal, No. 972 T. R., dated 27th September, 1883 [Paper No. 12].
From Under-Secretary to Government, Bengal, No. 1021 T. R., dated 1st October, 1883, and enclosure [Papers No. 13].
From Under-Secretary to Government, Bengal, No. 1083 T. R., dated 7th October, 1883, and enclosures [Papers No. 14].
Office Memorandum by Officiating Under-Secretary to Government of India, Revenue and Agricultural Department, No. 964 R., dated 10th October, 1883, and enclosures [Papers No. 15].
From Under-Secretary to Government, Bengal, No. 1117 T. R., dated 10th October, 1883, and enclosures [Papers No. 16].
From Under-Secretary to Government, Bengal, No. 1160 T. R., dated 13th October, 1883, and enclosures [Papers No. 17].
From Bábú Kishori Lál Sarkár, Calcutta, dated 18th October,, 1883 [Paper No. 18].
From Under-Secretary to Government, Bengal, No. 1299 T. R. dated 27th October, 1883, and enclosures [Papers No. 19].
From Bábú Kishori Lál Sarkár, Calcutta, dated 3rd November, 1883 [Paper No. 20].
From Under-Secretary to Government, Bengal, No. 2321-837 L. R., dated 10th November, 1883, and enclosure [Papers No. 21].
From Under-Secretary to Government, Bengal, No. 2389-861 L. R., dated 16th November, 1883, and enclosure [Paper No. 22].
From Under-Secretary to Government, Bengal, No. 2395-863 L. R, dated 17th November, 1883, and enclosure [Papers No. 23].
Memorial from the Committee of the Orissa People's Association, dated 1st November, 1883 [Paper No. 24].
From Bábú Ráj Kissor Mukárjí, Uttarpára, dated 10th November, 1883, and enclosure [Papers No. 25].
From Honorary Secretary, Tirhút Landholders Association, No. 11, dated 13th November, 1883, and enclosure [Papers No. 26].
From Bábú Kishori Lál Sarkár, dated 17th November, 1883 [Paper No. 27].
From Secretary, Central Committee of Landholders of Bengal and Bihár, No. 118, dated 27th November, 1883. and enclosures [Papers No. 28].
Endorsement by Officiating Under-Secretary to Government of India, Revenue and Agricultural Department No. 1064, dated 5th December, 1883, and enclosures [Papers No. 29].
Memorial of certain Zamíndárs, Taluqdárs and Intermediate Landholders of Sherpur, Maimansingh district, dated 16th November, 1883 [Paper No. 30].
From Under-Secretary to Government, Bengal, No. 2670-954, dated 12th December, 1883, and enclosures [Papers No. 31].
From Secretary, British Indian Association, No. 123, dated 18th December, 1883, and enclosure [Papers No. 32].
From Secretary, Landholders Committee, Rájsháhi, dated December, 1883, and enclosure [Papers No. 33].
Endorsement by Assistant Secretary to Government, Bengal, Legislative Department, No. 2, dated 5th January, 1884, and enclosures [Papers No. 34].
From Under-Secretary to Government, Bengal, No. 2789-1001 L. R., dated 19th December, 1883, and enclosures [Papers No. 35].
From Under-Secretary to Government, Bengal, No. 182-43 L. R., dated 16th January, 1884, and enclosure [Papers No. 36].
Resolutions passed at Meeting of the Talanda Branch Indian Association, held on 16th January, 1884 [Paper No. 37].
From Secretary, Bhágulpur Landholders Association, No. 106, dated 9th January, 1884, and enclosures [Papers No. 38].
From Under-Secretary to Government, Bengal, No. 227-68 L. R., dated 21st January, 1884, and enclosure [Papers No. 39].
From Officiating Secretary to Government, Bengal, No. 540-231 L. R., dated 9th February, 1884, and enclosure [Papers No. 40].
From Honorary Secretary, Tirhút Landholders Association, No. 5, dated 9th February, 1884, and enclosure [Papers No. 41].

No. II.

THE BENGAL TENANCY BILL, 1884.

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SCHEDULE II.—EXTRACT FROM PREAMBLE TO REGULATION VIII OF 1819.
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SCHEDULE IV.—LIMITATION.

No. II.

Explanation of abbreviations in margin.

D. means Mr. Field's Digest.

C. B., the Bill prepared by the Commission.

B. B. the Bill submitted by the Bengal Government with letter No. 849, dated 27th July, 1881.

SECTION means the corresponding section of the Bill as introduced in March, 1883.

A Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the Territories under the Administration of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Section 1 (1). **1.** (*1*) This Act may be called the Bengal Tenancy Act, 1884.

Short title.

Section 1 (2). (*2*) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local Gazette, appoint in this behalf.

Commencement.

[C. B., s. 1. B. B., s. 1.] Section 1 (3). (*3*) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third part of the First Schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor General in Council, by notification in the local Gazette, extend the whole or any part of this Act to the Division of Orissa.

Local extent.

[C. B., s. 2. B. B., s. 2. Section 2. **2.** (*1*) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation.

Repeal.

(*2*) When this Act is extended to the Division of Orissa, such of those enactments as are in force in that Division, or, where a part only of this Act is so extended, so much of them as is inconsistent with that part, shall be repealed in that Division.

(*3*) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

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

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

Definitions.

[D. § 1. C. B., s. 3. B. B., s. 3.] Section 3 (1). (*1*) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district:

Provided that the registration of a tenure under section 3(*2*) (*c*) of the Land Registration Act, 1876, shall not constitute it an estate within the meaning of this definition.

VI of 1876. (B.C.)

[D. § 1. C. B., s. 3. B. B., s. 3.] Section 3 (2). (*2*) "Proprietor" means a person or a number of persons owning an estate.

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

Section 3 (4). (*4*) "Landlord" means a person or a number of persons immediately under whom a tenant holds.

[D. § 1. C. B., s. 3. B. B., s. 3. See s. 227.] Section 3 (10). (*5*) "Rent" means whatever is payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant.

Section 3 (11). (*6*) "Pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery."

Section 3 (13). (*7*) "Holding" means a parcel or parcels of land held by a tenant of a landlord under one lease or one set of conditions.

Section 3 (14). (*8*) "Agricultural year" means, where the Bengalí year prevails, the year commencing on the first day of Bysák, where the Faslí or Amlí year prevails, the year commencing on the first day of Asin, and, where any other year prevails for agricultural purposes, that year.

[D. § 20 & 37. C. B., ss. 6 & 16. B. B., ss. 6 & 15.] Section 3 (15). (*9*) "Permanent Settlement" means the Permanent Settlement of Bengal, Bihár and Orissa, made in the year 1793.

Section 3 (16). (*10*) "Transfer" includes sale, whether voluntary or in execution of a decree, and mortgage and gift.

Section 3 (17). (*11*) "Succession" includes both intestate and testamentary succession.

[C. B., s. 1. B. B., s. 3.] Section 3 (19). (*12*) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to.

Section 3 (20). (*13*) "Prescribed" means prescribed by the Local Government by notification in the official Gazette.

Section 3 (21). (*14*) "Collector" means the Collector of a District or any other officer appointed by the Local Government to discharge the functions of a Collector under this Act.

Section 3 (22). (*15*) "Revenue-officer" in any provision of this Act means such officer as the Local Government may appoint to discharge the functions of a Revenue-officer under that provision.

[D., § 26. C. B., ss. 14 & 15. B. B., ss. 13 & 14.] Section 36. (*16*) "Patní tenure" means a tenure of the kind described in Schedule II annexed to this Act, and includes the darpatní and other similar tenures referred to in that schedule.

CHAPTER II.

CLASSES OF TENANTS.

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

Classes of tenants.

(1) Tenure-holders, including under-tenure-holders,

(2) Raiyats and

Section 3 (6). (3) Under-raiyats, that is to say, tenants holding whether immediately or mediately under raiyats;

and the following classes of raiyats, namely:—

(*a*) raiyats holding at fixed rates, which expression includes raiyats holding either at a fixed rent or at a fixed rate of rent,

(*b*) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(*c*) non-occupancy raiyats, that is to say, raiyats not having such a right of occupancy.

Section 3 (4). **5.** (*1*) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder the right to collect rents, and includes also the successors in interest of persons who have acquired such a right and the persons who are to be deemed tenure-holders under section 37.

Meaning of tenure-holder and raiyat.

[D., § 1. C. B., s. 3. B. B., s. 3. ("raiyat" and "land.")] Section 3 (5). (*2*) "Raiyat" means primarily a person who has acquired land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and, subject to section 37, includes also the successors in interest of persons who have so acquired land.

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

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

(*a*) local custom;

(*b*) the provisions of section 37, with respect to raiyats who sub-let more than half their holdings; and

(*c*) the nature of the right of tenancy as originally acquired, that is to say, whether it was a right to collect rents or a right to cultivate land.

(*5*) Where the area of a holding exceeds 100 standard bighás, and the whole or part of it is sub-let, the tenant shall be presumed to be a tenure-holder until the contrary is shewn.

CHAPTER III.

TENURE-HOLDERS.

Enhancement of rent.

6. (*1*) Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

Enhancement of rent. [D., s. 19. C. B., s. 7. B. B., s. 7.] Section 18.

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

(*b*) that the tenure-holder, by receiving reductions of his rent, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

(*2*) A reduction of rent granted to a tenure-holder on account of diluvion or for land taken under the provisions of any enactment for the time being in force for the acquisition of land for public purposes or companies shall not be deemed a reduction within the meaning of this section.

[D., § 23. C. B., ss. 9 & 12. B. B., ss. 9 & 10.] Section 21. **7.** (*1*) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

Limits of enhancement of rent of tenures.

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

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

(*a*) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest;

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

(*c*) the cost and risks of collection.

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

Bengal Tenancy Bill.

(*Chapter III.—Tenure-holders. Secs. 8 to 16.*)

[C.B., s. 10(*a*). B.B., s. 11(*a*).] Section 22.

8. Where the rent of a tenure-holder is liable to enhancement, the enhanced rent fixed under the last foregoing section shall not be more than double the rent previously payable.

Enhanced rent not to be more than double the previous rent.

[C.B., s. 10(*c*). B.B., s. 11(*b*).] Section 23.

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

Power to order gradual enhancement.

[C.B., s. 10(*b*). B.B., s. 11(*c*).] Section 24.

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

Rent once enhanced may not be altered for ten years.

Other incidents of tenures.

Other incidents of tenures.

[C. B., s. 13. B. B., ss. 13 & 17.] Section 25.

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

Transfer and transmission of permanent tenures.

Section 26.

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

Permanent tenure-holder not liable to ejectment.

Patní tenures.

Patni tenures.

[D., § 26. C. B., s. 14. B. B., s. 13.] Section 37 (2).

13. The holder of a patní tenure may, subject to the provisions of this Act, let the land comprised in his tenure or any part thereof.

Power of patnídar to sub-let.

[D., § 27. C. B., s. 53 (*a*). B. B., s. 45 (*a*).] Section 38.

14. (*1*) When a patní tenure is transferred, whether voluntarily, or by sale in execution of a decree, or by summary sale under this Act, the landlord may require the transferee to furnish substantial security to the amount of one half-year's rent of the tenure, for the payment of the rent and the fulfilment of the conditions of the tenure.

Right of landlord of patní tenure to demand security from transferees.

[D., § 29. C. B., s. 53 (*b*). B. B., s. 45 (*b*).] Section 40 (*1*).

(*2*) In the case of a transfer by sale in execution of a decree, or by summary sale, if security is demanded by the landlord from the purchaser under this section and is not furnished within one month from the date on which it is so demanded, the landlord may attach and hold possession of the tenure to the exclusion of the transferee until the security is furnished.

Section 40 (*2*).

(*3*) While an attachment under this section continues, the landlord may collect the rents from the under-tenure-holders or raiyats, and, after deducting therefrom the cost of the attachment, the expenses of collection and the rent due to himself, he shall hold the balance in trust for the purchaser.

(*4*) If the rents so collected are not sufficient to discharge the cost of the attachment, the expenses of collection, and the rent due to the landlord, the purchaser shall be liable for the deficiency, and the landlord may proceed against him for the recovery of the same. Section 40 (*3*).

[D., § 28. C. B., s. 53(*b*.) B. B., s. 45 (*c*).] Section 41 (*1*).

(*5*) If the security tendered under this section by any transferee is rejected by the landlord, the transferee may, within three months from the date of the rejection, apply to the Civil Court for an order directing the landlord to receive the security, and the Court, if satisfied of the sufficiency of the security tendered, may make such order, or, if not so satisfied, may make an order rejecting the application.

Section 41 (*2*).

(*6*) No appeal shall lie from any order under this section.

Registration.

Registration of voluntary transfers and successions.

[D., § 25. C. B., s. 46. B. B., s. 37.] Section 27 (*1*).

15. (*1*) When a transfer of a permanent tenure (other than a transfer by sale in execution of a decree or by summary sale under this Act) or a succession to such a tenure, takes place, the landlord shall, subject, in the case of a patní tenure, to the provisions of the last foregoing section, register the same on the joint application of the transferor and transferee, or on the application of the person succeeding, as the case may be, and on payment by the applicant of the fee next hereinafter prescribed:

Registration.

Provided that a landlord may, if he thinks fit, refuse to register a transfer of a tenure if any arrear of rent is due thereon.

[D., s. 27. C. B., ss. 47, 49. B. B., ss 39, 41.] Section 27 (*2*)

(*2*) The fee payable on an application under this section shall be as follows, namely:—

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

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

Section 27 (*3*).

(*3*) If a landlord refuses to comply with any application under this section, he shall deliver to the applicant a statement in writing of the reasons for his refusal, and if he fails to do so the applicant may institute a suit to recover from him such sum by way of penalty not exceeding one hundred rupees as the Court thinks fit.

[C.B., ss. 47, 48 (*c*). B. B., ss. 39, 40 (*c*).] Section 29 (*1*).

16. (*1*) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure, require the purchaser to pay

Registration of transfer by sale in execution of decree other than decree for rent.

XIV of 1882.

Bengal Tenancy Bill.

(*Chapter III.—Tenure-holders. Secs. 17—22.*)

into Court the registration fee prescribed by the last foregoing section and such further fee for service of notice of the sale on the landlord as may be prescribed by the rules under section 22.

Section 29 (*2*).

(*2*) When the sale has been confirmed, the Court shall forthwith cause to be served on the landlord a notice of the sale, requiring him to register the same, and informing him that the registration-fee has been received and will be paid to him on demand when the registration has been effected; and the landlord shall, in the absence of sufficient cause, forthwith comply with the requisition.

tion 30.

17. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, or by summary sale under this Act, the landlord shall register the transfer without any application or requisition being made to him in this behalf, and without the payment of any fee.

Registration of transfer by sale in execution of decree for rent or by summary sale.

s. 10. ., ss. 46. (*1*) 49 B., ss. 37, (*a*) and 41.] ction 31.

18. (*1*) When a transfer of a permanent tenure (not being a transfer by sale in execution of a decree for arrears of rent or by summary sale under this Act) has taken place, the landlord may, until the transfer has been registered under this chapter, hold the transferor and transferee jointly and severally liable for arrears of rent accruing after the transfer.

Effect of omission to register.

(*2*) A person becoming entitled to a permanent tenure by transfer or succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the transfer or succession has been registered under this chapter, or a notice thereof has been served on the landlord in manner directed by rules under section 22.

[C.B., s. 35. B.B., s. 41.] Section 32 (*1*).

19. (*1*) If a landlord refuses or neglects for a period of one month to register a transfer or succession which he is bound to register under the foregoing sections, the transferor or transferee, or, as the case may be, the person succeeding, may apply to the Civil Court to compel such registration.

Application to Court to compel landlord to register.

Section (32) 2.

(*2*) The Court thereupon may issue a notice to the landlord, and, when the application is made by one party to a transfer, also to the other party or parties to the transfer, requiring him or them, as the case may be, to show cause, at a time and place therein specified, why the transfer or succession should not be registered.

Section 32 (*3*).

(*3*) If sufficient cause as aforesaid is not so shown, the Court may make an order directing the landlord to register the transfer or succession, and the making of such an order shall have the same effect as if the transfer or succession had been registered.

(*4*) If sufficient cause as aforesaid is shown, the Court may refuse to make an order, or may make such order as in its opinion will meet the circumstances of the case.

[C.B., ss. 50 and 51. B B., ss. 42 and 43.] Section 33 (*1*).

20. (*1*) When a transfer (other than a transfer by sale in execution of a decree or by summary sale under this Act) or a succession, registrable under the foregoing sections, has taken place, and no application is made for its registration within the six months following the date on which it has taken place, the landlord may apply to the Civil Court to authorize the registration of the transfer or succession and to compel the parties to the transfer, or the person succeeding, as the case may be, to pay the fee mentioned in section 15.

Application by landlord to compel registration.

Section 33 (*2*).

(*2*) The Court may thereupon issue a notice, calling on the parties to the transfer, or the person succeeding, as the case may be, to show cause, at a time and place specified in the notice, why the registration should not be made and why they or he should not pay the fee.

Section 33 (*3*).

(*3*) If sufficient cause as aforesaid is not so shown, the Court may make an order authorising the landlord to register the transfer or succession, and directing the transferee, or the person succeeding, as the case may be, to pay the fee. The making of such an order shall have the same effect as if the transfer or succession had been registered, and the order so made shall, so far as it directs the recovery of the fee, have the force of a decree in a suit.

(*4*) If sufficient cause as aforesaid is so shown, the Court may refuse to make an order, or may make such order as in its opinion will meet the circumstances of the case.

[C. B., s. 54. B. B., s. 46.] Section 34.

21. When a transfer of, or a succession to, a tenure has been registered under the foregoing sections, every person to or from whom the tenure or any share thereof is transferred, or (as the case may be) every person succeeding to the tenure, shall be entitled to receive from the landlord as many copies as he may from time to time demand of the entry in the register relating to the tenure, certified by the landlord as a true copy: provided that for every copy so received he shall pay to the landlord such fee, not less than *one anna* or more than *one rupee*, as the Local Government may from time to time fix in this behalf.

Landlord to give copies of entries in the register.

[C. B., s. 45. B. B., s. 46.] Section 35 (*1*).

22. (*1*) The Local Government may, from time to time, by rules consistent with this Act and published in the official Gazette, prescribe forms for the registers to be maintained under the foregoing sections, and generally the procedure to be followed in regard to registration.

Power to make rules regarding registration.

Section 35 (*2*).

(*2*) In making any rule under sub-section (*1*) the Local Government may provide that any breach thereof shall be punishable with fine which may extend to fifty rupees.

Bengal Tenancy Bill.

(Chapter IV.—Raiyats holding at fixed rates. Sec. 23.)

(Chapter V.—Occupancy-raiyats. Secs. 24—30.)

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

Incidents of holding at fixed rates.

23. A raiyat holding at a fixed rent or rate of rent—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as a tenure-holder, and

C. B., s. 13. [B. B., ss. 12 & 17.] Section 26.

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

CHAPTER V.

OCCUPANCY-RAIYATS.

General.

General. [B. B., s. 19 (1) & Expl. IV (*e*), proviso.] Section 44.

Continuance of existing occupancy-rights.

24. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land, shall, when this Act comes into force, have a right of occupancy in that land.

Section 47.

Settled raiyats to have occupancy-rights.

25. (*1*) Every settled raiyat of a village or estate shall have a right of occupancy in all land held by him as a raiyat in that village or estate.

Section 47.

(*2*) Every person who, being a settled raiyat of a village or estate, held land as a raiyat in that village or estate at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force.

Section 45 (*1*).

Definition of settled raiyat.

26. (*1*) Every person who for a period of twelve years whether wholly or partly before or after the commencement of this Act has continuously held as a raiyat land situate in any village or estate, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village or estate.

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

Section 45 (*1*).

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

Section 45 (*2*).

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

Section 45 (*3*).

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

Section 46.

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

(*7*) If a raiyat recovers possession of land under section 96, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

Definition of village and estate.

27. For the purpose of the foregoing sections of this chapter— [B. B., s. 19, Expl. II.] Section 43.

(*a*) Village means an area included in a village map of the revenue-survey within the same exterior boundary, including such outlying portions (if any) as appear from the map to belong to the village, or, where no such maps have been prepared, such area as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested.

(*b*) Where two or more estates have been created by one or more partitions taking place, whether before or after the commencement of this Act, but since *the first day of January, 1853*, the area comprised in the parent estate of which they would have formed part if no such partition had taken place shall be deemed to be a single estate.

Section 56.

Effect of acquisition of occupancy-right by landlord.

28. If the landlord of a raiyat having a right of occupancy acquires, by purchase or otherwise, the interest of the raiyat, the occupancy-right shall cease to exist, but nothing in this section shall prejudicially affect the rights of any third person.

Special provisions as to joint owners and farmers.

29. (*1*) A person holding land as a raiyat shall not be prevented from acquiring an occupancy-right in the land by reason only that he is jointly interested in the land as proprietor or tenure-holder.

[D., § 40, Expls. I & V. C. B., s. 19, Expl. IV. B. B., s. 19, Expl. IV (*d*).] Section 47, proviso.

(*2*) A person holding as an ijárádár or farmer of rents shall not by such holding acquire a right of occupancy in the land, but if a person acquires a right of occupancy in land he shall not lose it by subsequently holding the land in farm.

Saving as to khámár land.

30. Nothing in this Chapter shall confer a right of occupancy in a proprietor's private lands known in Bengal as khámár, nij or nij-jot, and in Bihár as zírat, nij, sír or kamat, where any such land is held under a lease for a term of years or under a lease from year to year.

[D., § 40, Expl. V. C. B., s. 19, Expl. 3 (*d*), Expl. (4) (*g*) B. B., s. 19, Expl. III (*b*), Expl. IV (*f*).] Section 13.

Bengal Tenancy Bill.

(Chapter V.—Occupancy-raiyats. Secs. 31—35.)

Incidents of occupancy-right.

31. Where a raiyat has a right of occupancy in respect of any land, the following provisions shall apply, namely:—

[B. B., s. 69.] Section 50, cl. (*a*).

(*a*) He may use the land in any manner which does not render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

[C. B., s. 77, B. B., s. 69.] Section 50, cl. (*b*).

(*b*) He may make improvements on the land as by this Act provided.

[D., § 42. B. B., s. 21. (*d*).] Section 50, cl. (*c*).

(*c*) He shall pay rent at fair and equitable rates.

[C. B., s. 20 (*e*). B. B., ss. 21 (*e*), 31, 69 (*a*).] Section 50, cl. (*d*).

(*d*) He shall not be ejected by his landlord from the land, except in execution of a decree for ejectment passed on the ground—

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

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

(*e*) He may surrender his holding in accordance with this Act.

[C. B., s. 20 (*a*), (*b*) and (*d*). B. B., s. 21 (*a*) and (*b*).] Section 50, cl. (*f*)

(*f*) His right of occupancy in the land shall, subject to the rights reserved to the landlord by this Act, be capable of being transferred and bequeathed by will in the same manner and to the same extent as other immoveable property.

[D. § 40, note 7. B. B., s. 71.] Section 50, cl. (*g*).

(*g*) He may, subject to the provisions of this Act, sub-let his land or any part thereof.

[D., § 41, note 9. C. B., s. 20 (*c*). B. B., s. 21 (*c*).] Section 50, cl. (*g*).

(*h*) His right of occupancy in the land shall, if he dies intestate in respect of it, descend in the same manner as any other immoveable property: provided that in any case in which, under the law of inheritance to which he is subject, his other property goes to the Crown, his right of occupancy shall be extinguished.

Restrictions on transfer.

Restrictions on transfer.

Landlord's right of pre-emption on voluntary sale of occupancy-right.

32. (*1*) The right of a raiyat to sell his occupancy-right shall be subject to a right of pre-emption on the part of his landlord.

Section 51 (*1*).

(*2*) For the purpose of enabling the landlord to exercise his right of pre-emption, the raiyat shall, if he intends to sell his occupancy-right to any person other than the landlord, file in the office of such Court or officer as the Local Government may appoint in this behalf, for service on the landlord, a written notice of his intention, stating the person to whom he intends to sell the right, the terms on which he intends to sell, and the incumbrances, if any, to which the right is subject, and shall defer proceeding with the sale until the expiration of six weeks from the date on which he files the notice.

Section 51 (*2*).

(*3*) The Court or officer in whose office the notice is filed shall forthwith cause it to be served on the landlord in such manner as the Local Government may, from time to time, by rule direct.

Section 51, (*3*).

(*4*) The landlord may, within the period of six weeks from the date of the notice being filed, claim to purchase the occupancy-right from the raiyat at such price as may be agreed on between them, or, if they cannot agree on a price, at such price as may be fixed by the Civil Court on an application made to it in this behalf by the landlord within the said period of six weeks; and if the landlord so claims and, within one month from the date on which a price is agreed on or fixed by the court, tenders that price to the raiyat, the raiyat shall either abstain from selling the land, or sell it to the landlord at that price.

Section 51, (*4*).

(*5*) If a raiyat sells his occupancy-right to any person other than the landlord without having filed the notice required by this section, or within the period of six weeks from the date of the notice being filed, the sale shall be void as against the landlord.

(*6*) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring a Civil Court to associate with itself for the purpose of fixing the price of an occupancy-right under this section such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

[Act XIV of 1882, s. 310.] Section 52.

Landlord's right of pre-emption on sale in execution.

33. Where an occupancy-right is sold in execution of a decree, and two or more persons, one of whom is the landlord, respectively advance the same sum at any bidding, the bidding shall be deemed to be the bidding of the landlord.

Section 53, (*1*).

Landlord's right to take the place of mortgagee on foreclosure.

34. (*1*) Where an occupancy-right has been mortgaged by the raiyat and an order absolute for foreclosure is applied for in respect of it under section 87 of the Transfer of Property Act, 1882, the Court shall, if it proposes to make the order, cause a notice of the application to be served on the landlord, and shall defer making the order for a period of one month from the service of the notice.

IV of 1882.

Section 53, (*2*).

(*2*) If the landlord within the said period of one month pays into Court the amount requisite to redeem the mortgage, the Court shall pay that amount to the plaintiff in the suit, declare the landlord entitled to stand in the place of the plaintiff, and pass an order absolute for foreclosure in favour of the landlord.

Section 53, (*3*).

(*3*) An order absolute passed under sub-section (*2*) shall have the same effect as if the landlord had been the mortgagee and the plaintiff in the suit.

Section 54, (*1*).

Restrictions on gifts of occupancy-right.

35. (*1*) A gift of an occupancy-right in land shall not be valid against the landlord unless it is made by a registered instrument.

(2) The registering officer shall not register any such instrument except on payment of the prescribed fee for service on the landlord of notice of the registration.

Section 54 (2). (3) When any such gift has been registered, the registering officer shall forthwith serve notice of the registration on the landlord.

(4) In the case of gifts made by Muhammadans, nothing in this section shall apply to a gift to a person within the prohibited degrees.

Meaning of landlord for purposes of foregoing sections.

36. For the purpose of the last four foregoing sections the term landlord shall mean exclusively either—

(*a*) a proprietor under whom immediately the land is held by the raiyat;

(*b*) a permanent tenure-holder under whom immediately the land is held by the raiyat; or

(*c*) any other tenure-holder under whom immediately the land is held by the raiyat, provided that such tenure-holder holds immediately under the proprietor or a permanent tenure-holder and is authorized in writing by the proprietor or permanent tenure-holder, as the case may be, to exercise the rights of a landlord for the purposes of the said sections.

Restrictions on sub-letting.

Restrictions on sub-letting.

Conversion of sub-letting occupancy-raiyats into tenure-holders.

37. If the portion of his holding sub-let by an occupancy-raiyat exceeds more than half his holding, he shall, on being registered in a public register as a tenure-holder under any Act which may be passed for the registration of tenure-holders, be deemed to have become a tenure-holder within the meaning of this Act.

Provided as follows:—

(*a*) Nothing in this section shall apply to any person who is disabled from cultivation by age, sex, disease, accident or temporary absence from home on military or domestic service or a pilgrimage and who sub-lets his holding or any part thereof for a term not exceeding the duration of his disability

(*b*) If a person is converted into a tenure-holder by virtue of this section his rent shall be liable to enhancement on the same terms and subject to the same conditions as if he were an occupancy-raiyat.

Explanation. A person who has been converted into a tenure-holder by virtue of this section does not by reason of the portion of his holding sub-let ceasing to be more than one-half the holding become again converted into a raiyat.

Restrictions on term of sub-lease.

38. If an occupancy-raiyat sub-lets his holding or any part thereof, the sub-lease shall not be valid for a term exceeding seven years.

Provided as follows:—

(*a*) Where a raiyat is disabled from cultivation by age, sex, disease, accident or temporary absence from his home on military or domestic service, or a pilgrimage, nothing in this section shall prevent him or be deemed to have prevented him from sub-letting his holding or any part thereof for a term not exceeding the duration of his disability;

(*b*) In the case of a sub-lease granted before the commencement of this Act the term of *seven* years shall for the purposes of this section be computed from the commencement of this Act.

Enhancement of rent.

Enhancement of rent.

Presumption as to fair and equitable rent.

39. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved. [D., § 42, B. B., s. 21 (*d*).]

Restriction on enhancement of money rents.

40. Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced, except as provided by this Act. Section 58. [B. B., s. 21 (*d*).] Section 60.

Enhancement of rent by registered contract.

41. (*1*) The money rent of an occupancy-raiyat may be enhanced by registered contract, subject to the following conditions:— Section 59 (*1*

(*a*) The rent must not be enhanced so as to exceed by more than four annas in the rupee the rent previously payable by the raiyat. Section 59 (2).

(*b*) The contract must fix the rent for a term of at least seven years.

(*c*) If the enhanced rent exceeds, by more than two annas in the rupee, the previous rent, the contract must fix the rent for a term of at least fifteen years.

(*2*) The registering officer shall, before registering a contract under this section, ascertain that the contract is in accordance with the provisions of this Act, and that the raiyat is competent and willing to enter into it, and understands its nature. Section 59 (*2*).

Enhancement on re-letting.

42. (*1*) Where land which has been previously held by a tenant at a money-rent is let to a settled raiyat of the village or estate in which it is situate, the raiyat shall not be bound to pay for it any rent higher than that which was paid for it by the previous tenant, except in pursuance of a registered contract for enhancement of the rent. Section 61.

(*2*) The provisions of the last foregoing section shall apply to every such contract.

Enhancement of rent by suit.

43. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, namely:— [D., § 43 (1) and (2). C. B., s. 23 (1), (3) and (4). B. B., s. 23 (1), (3) and (4).]

(*a*) That the rate of rent paid by the raiyat is below the prevailing rate payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity. Section 74.

(*b*) That there has been a rise in the average prices of staple food crops in the locality or at the usual markets.

(*c*) That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(*d*) that the productive powers of the land held by the raiyat have been increased by fluvial action.

Rules as to enhancement on ground of prevailing rate.

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

(*a*) The enhanced rent shall not exceed the previous rent by more than eight annas in the rupee.

(*b*) If in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize by rule in that behalf. XIV of 1882.

(*c*) In determining under this section the rate of rent payable by a raiyat his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom. Act XII of 1881, s. 20.

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

Rules as to enhancement on ground of rise in prices.

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

(*a*) The Court shall have regard to the lists of prices periodically published under the authority of the Local Government, and shall compare the average prices during the quinquennial period immediately preceding the institution of the suit with the average prices during such other quinquennial period as it may appear equitable and practicable to take for comparison.

(*b*) The Court shall not enhance the rent so that the enhanced rent exceeds the previous rent by more than four annas in the rupee.

(*c*) Subject as aforesaid, and subject also to section 48, the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last quinquennial period bear to the average prices during the previous quinquennial period taken for purposes of comparison.

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

46. Where an enhancement is claimed on the ground of a landlord's improvement—

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

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

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

(ii) the cost of the improvement;

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

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

(*c*) The Court may make its decree conditional, and subject to review and reconsideration in the event of the improvement not producing the estimated effect within a specified time.

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

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

(*a*) The Court shall not take into account any increase which is merely temporary or casual.

(*b*) The enhanced rent shall not exceed the previous rent by more than four annas in the rupee.

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

Enhancement to be fair and equitable.

48. The Court shall not in any case decree any enhancement which appears under the circumstances of the case to be unfair or inequitable.

Power to order progressive enhancement.

49. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached. [C.B., s. 23 (*d*). B. B. s. 24 (*d*).] Section 77.

Limitation of right to bring successive enhancement-suits.

50. (*1*) A suit instituted for the enhancement of the rent of a holding on the ground that the rent paid is below the prevailing rate, or on the ground of an increase in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if within the said period of fifteen years the rent has been commuted under section 53 or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or any ground corresponding thereto or dismissing the suit on the merits. [B. B., 143.] Section 78.

(*2*) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure. XIV of 1882.

Bengal Tenancy Bill.

(*Chapter V.—Occupancy-raiyats. Secs. 51—54.*)

(*Chapter VI.—Non-occupancy-raiyats. Secs. 55—57.*)

Reduction of rent.

Reduction o rent. [D., § 47. C. B., s. 25 (2) and (3). B. B., s. 25 (2) & (3).] Section 79.

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

Reduction of rent.

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

(*b*) on the ground that there has been a fall in the average prices of staple food crops in the locality or at the usual markets.

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

Price-lists.

Price-lists. [C. B., 122. B.B., s. 145]. Section 83 (*1*).

52. (*1*) The Collector of every district shall prepare, at such time or times of the year as the local Government fixes in this behalf, lists of the market-prices at harvest-time of staple food crops grown in such local areas as the local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

Price-lists of staple crops.

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

Section 83 (*2*).

(*3*) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette.

Section 83 (*3*).

(*4*) Any such price-list so published shall, in any proceedings under this chapter, be conclusive evidence of the prices prevailing in the local area at the time to which it relates.

(*5*) The Collector shall, fifteen days before submitting a price-list to the Board of Revenue under this section, publish it within the local area to which it relates in the manner in which notices are usually published, and if any landlord or tenant of land within the local area within the said period of fifteen days presents to him in writing any objection to the list he shall submit the same to the Board of Revenue with the list.

Commutation.

Commutation. [C. B., s. 86. B. B. ss. 90 and 92.] Section 83 (*1*).

53. (*1*) Where an occupancy-raiyat pays rent for a holding in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

Commutation of rent payable in kind.

(*2*) The application may be made to the Collector, or sub-divisional officer, or to an officer making a settlement of rents under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.

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

(*4*) In making the determination the officer shall have regard to— Section 83 (*2*).

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

(*b*) the average value of the rent actually received by the landlord during the preceding ten years.

(*5*) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as other orders made by Revenue-officers.

(*6*) If the application is opposed, the officer may, for reasons recorded in writing, refuse to grant it.

Power to make rules.

Power to make rules. [C. B., ss. 120, 122 and 28(c), B. B. ss. 134, 145 and 24 (c).] Section 84.

54. The Local Government may, from time to time, subject to the control of the Governor General in Council, make rules—

Power to make rules.

(*a*) for the guidance of officers engaged in the preparation of price-lists under section 52;

(*b*) determining what food crops shall be deemed to be staple crops for the purposes of this chapter in any local area, and

(*c*) for the guidance of officers registering contracts under section 41 and section 42.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

Application of chapter. Section 88.

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

Initial rent of non-occupancy-raiyat. Section 89.

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

Conditions of enhancement of rent.

57. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 60.

Bengal Tenancy Bill.

(*Chapter VI.—Non-occupancy-raiyats. Secs. 58—60.*)

(*Chapter VII.—Under-raiyats. Secs. 62—63.*)

[C. B., s. 79 (5).] B. B., ss. 26, 72 (5).] Section 90.

58. A non-occupancy raiyat shall be liable to ejectment on one or more of the following grounds, and not otherwise:—

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

(*a*) On the ground that he has failed to pay an arrear of rent.

(*b*) On the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

(*c*) Where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired.

(*d*) On the ground that he has refused to agree to pay a fair and equitable rent determined under section 60 or that the term for which he is entitled to hold at such a rent has expired.

Section 91.

59. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

Conditions of ejectment on ground of expiration of lease.

60. (*1*) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat, unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

Conditions of ejectment on ground of refusal to agree to enhancement.

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

Sections 92 (*1*) and 93 (*1*).

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

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

Sections 92 (*2*) and 93 (*2*).

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

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

(*7*) If the raiyat agrees to pay the rent so determined he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy. Section 93 (*2*).

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

(*9*) In determining what rent is fair and equitable the Court shall have regard to the average rent payable by raiyats for land of a similar description and with like advantages in the vicinity, but shall not allow any enhancement exceeding eight annas per rupee of the previous rent.

(*10*) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed. Section 92 (*2*).

Explanation of "admitted to occupation".

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

CHAPTER VII.

UNDER-RAIYATS.

Limit of rent recoverable from under-raiyats.

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

(*a*) When the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and

(*b*) In any other case—twenty-five per cent.

Restriction on ejectment of under-raiyats.

63. An under-raiyat shall not be liable to be ejected by his landlord, except at the end of an agricultural year and after a written notice to quit has been served on him in the prescribed manner not less than six months before the expiration of that year.

Bengal Tenancy Bill.

(Chapter VIII.—General Provisions as to Rent. Secs. 64—67.)

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Rules and presumptions as to amount of rent.

Rules and presumptions as to amount of rent.

[D. §§ 20 & 37. C. B., ss. 6 & 16. B. B., ss. 6 & 15.] Section 14.

64. (*1*) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the holding.

Rules and presumptions as to fixity of rent.

[D. §§ 21 & 38. C. B., ss. 6 & 17. B. B., ss. 6 & 16.] Section 15.

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

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

[D. § 38. C. B., s. 16. Expl. I. B. B., s. 15. Expl. I.] Section 16.

(*3*) When a raiyat has paid as rent a fixed share or the value of a fixed share of the produce of the land, the rent or rate of rent shall not be deemed to have been changed within the meaning of this section merely by reason of the amount paid having varied from year to year, or by reason of the rent having been commuted with the consent of both the raiyat and his landlord to a fixed money rent.

[D. § 37. C. B., s 16. Expl. II. B B., s. 15. Expl. II.] Section 17.

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

[D. § 20. C. B, s. 6. B. B., s. 6.] Section 19.

(*5*) Nothing in this section shall apply where the land is held for a term of years or the tenancy thereof is determinable at the will of the landlord.

Section 120.

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

Presumption as to amount of rent and conditions of holding.

Alteration of rent on alteration of area.

Alteration of rent on alteration of area.

Alteration of rent in respect of alteration in area.

66. (*1*) Every tenant shall—

[D. §§ 19, 2 43 (*c*) & 47. C. B., ss. 8 18, 22 (2) & 25 (1). B. B., ss. 8. 18, 23 (2) & 25 (1).] Section 96.

(*a*) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, and

(*b*) be entitled to a reduction of rent in respect of any diminution of the area of his holding caused by diluvion or otherwise, unless it is proved that the land lost was added to the area of the holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(*2*) In determining the amount to be added to the rent the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure.

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

Payment of rent.

Payment of rent.

Instalments of rent.

[C. B., s. 55 (*a*). B B., s. 47 (*a*).] Section 97.

67. (*1*) A money-rent payable by a tenure-holder shall be paid in such instalments and on such dates as may have been agreed upon between the tenure-holder and his landlord; in the absence of agreement, in such instalments and on such dates as may be customary; and in the absence of any agreement or custom, in such instalments and on such dates as the Local Government may fix by rule for any local area.

[C. B., s. 53 (*b*). B. B., s. 47 (*b*).] Section 98.

(*2*) A money-rent payable by a raiyat or under-raiyat shall be paid in such instalments, representing respectively such proportions of the yearly rent, and on such dates, not being more than four in each year, as the Local Government may fix by rule for any local area, and, subject to any such rules, as may be fixed by agreement, or in the absence of agreement, by custom.

[B. B., s. 47 (*b*).] Section 99(*1*).

(*3*) In making rules under this section the Local Government shall take into consideration the prevailing customs, the time of harvest, and the time at which land-revenue is payable.

Section 99(*2*).

(*4*) Every rule made under this section shall be published in manner prescribed not less than three months before the commencement of the agricultural year in which it is to take effect.

Bengal Tenancy Bill.

(Chapter VIII.—General Provisions as to Rent. Secs. 68—73.)

Time and place for payment of rent.

[D. s. 101, C. B. s. 56, B. B., s. 48.] Section 3(*12*)

68. (*1*) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

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

Provided that the Local Government may make rules authorizing a tenant to pay his rent by postal money-order.

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

Appropriation of payments.

69. (*1*) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

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

Receipts and accounts.

Receipts and accounts.

[D, § 61. C. B., s. 57. B. B., s. 49 (*a*) and (*b*).] Section 100.

Tenant making payment to his landlord entitled to a receipt.

70. (*1*) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

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

(*3*) The receipt and counterfoil shall specify the several particulars shown in the form of receipt given in Schedule III to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

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

[C. B., s. 51 (*b*). B. B., s. 49 (*c*).] Section 101.

Tenant entitled to full discharge or statement of account at close of year.

71. (*1*) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge, signed by the landlord.

(*2*) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year, a statement of account specifying the several particulars shown in the form of account given in Schedule III to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

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

Penalties and fine for withholding receipts and statements of accounts and failing to keep counterparts.

[D. s. 65, C. B, s. 57 (*d*), B. B. ss. 49 (*d*) & 94.] Section 102.

72. (*1*) If a landlord refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 70 for any rent paid by the tenant, the tenant may, within six months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(*2*) If a landlord refuses or neglects to deliver to a tenant demanding the same the receipt in full discharge or the statement of account for any year prescribed in section 71, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(*3*) If a landlord fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

Deposit of rent.

Deposit of rent.

Application to deposit rent in public office.

[D., § 99. C. B, ss. 58 & 59. B. B., ss. 50 & 51.] Section 103.

73. (*1*) In any of the following cases, namely:—

(*a*) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;

(*b*) when a tenant bound to pay money on account of rent has reason to believe that owing to a dispute or ill-feeling the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(*c*) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent in their behalf; or

(*d*) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent;

the tenant may present, to such officer as the Local Government from time to time appoints in this behalf for the local area in which the holding is situate, an application in writing for permission to deposit in his office the full amount of the money then due.

(*2*) The application shall contain a statement of the grounds on which it is made; shall, in case (*d*),

state the name of the person to whom the rent was last paid, and of the person or persons now claiming it; shall be signed by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount, not less than eight annas, as the Local Government from time to time by rule directs.

[D. §§ 99 & 100. C. B., s. 60. B. B., s. 52.] Section 104.

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

74. (*1*) If it appears to the officer to whom an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, he shall receive the rent and give a receipt for it under his official seal.

(*2*) The officer may, if he thinks fit, before receiving the rent, examine the person who has signed the statement required under the last foregoing section.

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

in case (*a*) of the last foregoing section, by the person to whom the rent was tendered;

in case (*b*) of that section, by the person specified in the application as the person to whom the rent was payable;

in case (*c*) of that section, by the co-sharers jointly; and

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

[D., § 100. C. B., s. 61 (*a*). B. B., s. 53 (*a*).] Section 105.

Notification of receipt of deposit.

75. (*1*) The officer receiving the deposit shall forthwith cause to be affixed in a conspicuous place in his office a notification of the receipt thereof, containing a statement of all material particulars.

(*2*) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the officer shall cause a notice of the receipt of the deposit to be served, free of charge, on every person who he has reason to believe claims or is entitled to the deposit.

[D. § 100. C.B., s. 61, cls. (*b*) & (*c*). B.B. s. 53, cls. (*b*) & (*c*). Sections 106 and 107.

Payment or refund of deposit.

76. (*1*) The officer may pay the amount of the deposit to any person appearing to him to be entitled to the same, or may, if he thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(*2*) The payment may, if the Local Government so direct, be made by postal money-order.

(*3*) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the officer with whom the rent was deposited.

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

Arrears of rent.

Arrears of rent. [C. B., s. 64. B. B., s. 56.] Section 125.

Rent first charge on transferable holding.

77. (*1*) The rent of every transferable holding shall be a first charge on the holding.

(*2*) If the right, title and interest of the tenant is brought to sale in execution of a money decree obtained by a person other than the landlord, the landlord shall be entitled to be first paid out of the sale proceeds any rent which may be due to him by the tenant, but this right shall be without prejudice to the landlord's charge under sub-section (*1*).

[D. §§ 12 (5) & 93. C. B. ss. 79(5) & 152. B. B. ss. 72 (5) & 169.] Section 111.

Ejectment from non-transferable holding for arrears.

78. (*1*) When an arrear of rent remains due in respect of a non-transferable holding at the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Fusli or Amli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

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

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

[D. § 101. C. B., s. 56. B. B., s. 48.] Section 108.

Interest on arrears.

79. In fixing the rate of interest on an arrear of rent, the Court shall have regard to established usage and to the agreement, if any, between the parties; but shall ordinarily decree simple interest at the rate of twelve per centum per annum from the expiration of the agricultural year in which the arrear fell due to the institution of the suit.

[D., § 68. C. B., s. 90. B. B. s. 96.] Section 109.

Power to award damages on rent withheld without reasonable cause or to defendant improperly sued for rent.

80. (*1*) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

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

[D., § 69. C. B., s. 91. B. B., s. 97.] Section 110.

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

Produce-rents.

Produce-rents. [C. B., s. 84, B. B., s. 88.] Section 112.

Order for appraising or dividing produce.

81. (*1*) Where rent is taken by appraisement or division of the produce—

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

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

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

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

(*3*) Where a Collector makes an order under this section, he may by order prohibit the removal of the produce until the appraisement or division has been effected.

Section 113.

Procedure where officer appointed.

82. (*1*) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selecting those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

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

Section 115 (*1*).

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

Section 115 (*2*).

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

(*5*) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final and shall be enforceable as a decree.

[C. B., s. 85, B. B., s. 89.] Section 118.

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

Rights and liabilities as to possession of crop.

83. (*1*) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(*2*) Where rent is taken by division of the produce, the tenant shall be entitled to exclusive possession of the whole produce until it is divided.

(*3*) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord, but shall not be entitled to remove any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time.

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

Liability for rent on change of landlord.

Liability for rent on change of landlord. [D., § 9. C. B., s. 78. B. B., s. 70.] Section 122.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

84. (*1*) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has given notice of the transfer to the tenant.

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

Illegal Cesses, &c.

Illegal cesses, &c. [D. §§ 13 & 57. C. B., s. 71. B. B., s. 63. (2).] Section 123.

Abwab, &c., illegal.

85. All impositions upon tenants under the denomination of *abwab*, *mahtut*, or other like appella-

Bengal Tenancy Bill.

(Chapter VIII.—General Provisions as to Rent. Secs. 86.)

(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants. Secs. 87 & 91.

tions, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

[D., § 64. B. B., ss. 63 (2), 64 (*a*), 93.] Section 124.

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

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

Improvements. [C. B., s. 29. B. B., s. 69.] Section 126.

87. (*1*) For the purposes of this Act the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the letting-value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

Definition of improvement.

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

(*a*) the construction of wells, tanks and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(*b*) the preparation of land for irrigation;

(*c*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(*d*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto; and

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

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

88. Where a raiyat holds at a fixed rent or a fixed rate of rent, his landlord shall not be entitled, as such, to prevent him from making any improvement in respect of his holding.

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

[C. B., s. 77. B. B., s. 69.] Section 127.

89. (*1*) Where a raiyat has an occupancy-right in his holding neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

Right to make improvement in case of occupancy-holding.

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

(*3*) If a question arises between the raiyat and his landlord—

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

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

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

[C. B., s. 77. B. B., s. 69.] Section 128.

90. (*1*) A non-occupancy-raiyat shall be entitled to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

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

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

91. (*1*) A landlord may register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making, by application to such Revenue-officer as the Local Government may appoint.

Registration of landlord's improvements.

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

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(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants. Secs. 92—95.)

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

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

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

92. (*1*) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon record the evidence in the presence of the parties, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

Application to record evidence as to improvement.

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

[C. B., ss. 20 (*e*) and 29.] Section 129.

93. (*1*) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been made.

Compensation for raiyats' improvements.

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

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

(*4*) Improvements made by a raiyat between the 2nd day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

Section 130.

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

Section 131.

94. (*1*) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

Principle on which compensation is to be estimated.

(*a*) to the amount by which the letting-value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(*b*) to the condition of the improvement, and the probable duration of its effects;

(*c*) to the labour and capital required for the making of such an improvement;

(*d*) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

(*e*) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

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

Surrender and abandonment.

Surrender and abandonment. [D. § 12 (3). C. B., s. 79 (3). B. B., s. 72 (3).] Section 139.

95. (*1*) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his right and interest in the holding.

Surrender.

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

(*3*) In the following cases the Court shall for the purposes of this section presume, until the contrary is shown, that such notice was so given, namely:—

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

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

(*c*) if the landlord himself, at any time during the agricultural year next following the surrender, lets to another tenant or cultivates the holding or any part thereof.

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

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

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(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants. Secs. 96—102.)

[D. s. 12 (4). C.B., s. 79 (4) B.B., s. 72 (4).] Section 140.

96. (*1*) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

Abandonment.

(*2*) When a landlord enters under this section he shall cause a notice in the prescribed form to be published in such manner as the Local Government by rule directs, stating that he has treated the holding as abandoned and has entered on it accordingly.

(*3*) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may order recovery of possession on such terms, if any, with respect to compensation to persons injured as to the Court may seem just.

Sub-division of holding.

Sub-division of holding. [B. B., ss. 21 (*b*), 37.] Section 150.

97. Nothing in this Act shall entitle a tenant whose holding is transferable to transfer or bequeath, without the consent of his landlord, a portion only of the land comprised in the holding so that it may be held from the landlord by the transferee or the person to whom it is bequeathed as a separate holding.

Portion of holding not transferable.

Ejectment.

Ejectment. [C. B., s. 79 (5), (6) & (7). B. B., s. 72 (5), (6) and (7).] Section 149.

98. No tenant shall be ejected from his holding except in execution of a decree.

No ejectment except in execution of decree.

Measurements.

Measurements. [D. § 58. C B., s. 75. B. B., s. 67.] Section 133.

99. (*1*) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him on this behalf, enter on and measure all land comprised in his estate or tenure.

Landlord's right to measure land.

(*2*) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases:—

(*a*) Where the area of the holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area.

(*b*) Where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation.

(*c*) Where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

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

[C. B., s. 65 (2). B. B. s. 57 (2).] Section 143.

100. (*1*) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

[D. s. 94. [B.B., ss. 1 & 177.] Sections 1 and 135.

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

[C. B., s. 66 (1). B. B., s. 58 (1).] Section 144.

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

101. (*1*) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made according to the Government measure of 14,400 square feet to one standard bighá

[D. § 94. C B., s. 76(*a*). B.B., s. 68 (*a*).] Section 137.

Standard of measurement.

(*2*) If the rights of the parties are regulated by any different local measure, the Government measure shall be converted into the local measure for the purposes of the suit.

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

[D. § 98. C. B., s. 76 (*b*) B.B., s. 68(*b*).] Section 138.

Managers.

Managers.

102. When co-owners of an estate or tenure disagree as to the management thereof, and in consequence there has ensued, or is likely to ensue,

[D. § 16. C. B., s. 56 (1) B. B., s. 57 (1).] Section 142.

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

(*a*) inconvenience to the public, or

(*b*) injury to private rights,

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

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

VII, 1876 (B. C)

Bengal Tenancy Bill.

(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants. Secs. 103—109.)

(Chapter X.—Record-of-rights and Settlement of Rents. Sec. 110.)

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

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

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

Power to appoint manager if order is not obeyed.

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

(*b*) in any case appoint a manager.

B., s. 66

B., s. 58 .] ction 145.

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

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

C. B.,s. 66(3.) B. B. s.58(3).] Section 146.

106. In any case in which the Court of Wards undertakes the management of an estate or tenure under section 104, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immoveable property shall apply to the management.

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

IX (B.C.) of 1879.

[C. B., s. 67. B. B., s. 59.] Section 147.

107. (*1*) A manager appointed under section 104 shall receive by way of remuneration such fixed salary or percentage of the money collected by him as manager as the District Judge from time to time directs.

Provisions applicable to manager.

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

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

(*4*) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(*5*) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(*6*) He shall pass his accounts at such period and in such form as the District Judge may direct.

(*7*) He may make any application which the proprietors could make under section 112.

(*8*) He shall be removeable by the order of the District Judge, and not otherwise.

[C.B., s. 68. B. B., s. 60.] Section 148.

108. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 104, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

Power to restore management to co-owners.

109. The High Court may from time to time make rules defining the powers and duties of managers under the foregoing sections.

Power to make rules.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

Record-of-rights.

Record-of-rights. Section 164.

110. (*1*) The Local Government may in any case with the previous sanction of the Governor General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a record-of-rights shall be prepared for all tenancies or any class of tenancies in a local area by Revenue-officers to be from time to time appointed by the Local Government.

Power to order preparation of record-of-rights.

(*2*) The cases in which an order may be made under this section without the previous sanction of the Governor General in Council are the following, namely:—

(*a*) where the landlord or a large proportion of the landlords or of the tenants applies for such an order and deposits for the payment of expenses such amount as the Local Government directs;

(*b* where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally; and

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(*Chapter X.—Record-of-rights and Settlement of Rents. Secs. 111—117.*)

(*c*) where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards.

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

Section 164.

111. Where an order is made under the last foregoing section the particulars to be recorded shall be specified in the order, and may include some or all of the following, namely :—

Particulars to be recorded.

(*a*) the name of each tenant;

(*b*) the class to which he belongs, that is to say whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy raiyat or under-raiyat;

(*c*) the situation, quantity and boundaries of the land held by him;

(*d*) the name of his landlord;

(*e*) the rent payable;

(*f*) the mode in which that rent has been fixed, whether by contract, by order of a Court or otherwise;

(*g*) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;

(*h*) the special conditions, if any, under which the tenant holds.

112. On the application of a proprietor or tenure-holder, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

Power for Revenue-officer to record particulars on application of proprietor or tenure-holder.

Sections 157 to 159.

113. (*1*) When the Revenue-officer has completed the record he shall cause a draft thereof to be locally published in such manner and for such period as the Local Government by rule directs, and shall receive and consider any objection which may be made to any entry therein during the period of publication.

Publication of record.

(*2*) After the expiration of this period the Revenue-officer shall finally settle the record, and shall cause it to be locally published in such manner as the Local Government by rule directs, and such publication shall be conclusive evidence that the record has been duly made under this Chapter.

114. If at any time before the final publication of the record under the last foregoing section a dispute arises as to the correctness of any entry which the Revenue-officer proposes to make or has made therein, the Revenue-officer shall hear and decide the dispute, and for that purpose shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and his decision shall have the force of a decree.

Procedure in case of dispute as to entries in record.

XIV of 1882.

115. (*1*) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under the last foregoing section.

Appeals from decisions of Revenue-officers.

(*2*) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under the last foregoing section, and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

XIV of 1882. Section 153.

(*3*) Subject to the provisions of Chapter XLII of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge as if he were a Court subordinate to the High Court within the meaning of the first section of that Chapter.

XIV of 1882. Section 153.

116. (*1*) Every record made under this Chapter shall distinguish between the disputed and the undisputed entries therein.

Undisputed entries in record to be presumptive evidence.

Section 165 XIV of 1882.

(*2*) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

Settlement of rents.

117. (*1*) The Local Government may, if it thinks fit, in any of the cases next hereinafter mentioned, make an order directing that the rents of all tenants or of any class or classes of tenants in any local area shall be settled by Revenue-officers to be from time to time appointed by the Local Government in this behalf:

Power to order Revenue-officers to settle rents.

Settlement of rents. Section 151.

Provided that the Local Government shall not make such an order until it is satisfied after local enquiry that the making of the order would be expedient.

(*2*) The cases in which an order may be made under this section are the following, namely :—

(*a*) any case in which a Revenue-officer may be directed under this Chapter to prepare a record-of-rights, and

(*b*) where a settlement of revenue is being made in respect of the local area.

(*3*) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made, and an order so notified shall continue in force until it is rescinded by an order notified in like manner.

(*4*) While an order under this section continues in force in respect of any tenants, a Civil Court shall not entertain a suit under this Act for the

Section 152.

Bengal Tenancy Bill.

(*Chapter X.—Record-of-rights and Settlement of Rents. Secs. 118—122.*)
(*Chapter XI.—Tables of Rates. Secs. 123 & 124.*)

enhancement or reduction of the rents of any of those tenants.

Section 156.

118. (1) When a Revenue-officer is directed under this Chapter to make a settlement of rents he shall ascertain and make a record of the particulars specified in section 111, and such other particulars, if any, as the Local Government may direct him to ascertain and record.

Procedure for settlement of rents.

(2) If at any time before the rent-roll is finally published as hereinafter provided, a dispute arises as to the correctness of any entry which the officer has made or proposes to make in the record under sub-section (1), the provisions of sections 114 and 115 shall apply.

(3) In the case of a tenure the rent of which is liable to alteration, or an occupancy-raiyat's holding, the officer shall, on the application of either landlord or tenant, settle a fair and equitable rent in respect thereof.

(4) For this purpose he shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in settling rents.

(5). In all proceedings under sub-sections (3) and (4) the officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure, and his decision in every such proceeding shall have the force of a decree.

(6). An appeal shall lie from every such decision to the Special Judge appointed under section 115, whose decision thereon shall be final, subject to this qualification, that if in a second appeal under sub-section (2) of this section the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any holding has been settled, the Court may settle a new rent for the holding, but in so doing shall be guided by the rents of the other holdings of the same class comprised in the same rent-roll, as ascertained or settled under this section.

(7) When the Revenue-officer has recorded the particulars and settled the rents which he is required to record and settle, he shall prepare the draft of one or more rent-rolls, showing the particulars recorded by him, and, when he settles the rent, the amount of the rent as settled.

(8) Section 113 shall apply to every rent-roll made under this section as if it were a record within the meaning of that section, and section 116 shall apply to all entries made in any such rent-roll under sub-section (1) of this section.

119. When any rent is altered under the last foregoing section, the alteration shall take effect from the beginning of the agricultural year next after the final publication of the rent-roll.

Time at which alteration of rent is to take effect.

120. When a landlord is entitled to apply to have the amount of the rent of a holding settled under section 118, sub-section (3), the rent of the holding as ascertained or settled under this chapter shall not be enhanced during a period of fifteen years from the date of the final publication of the rent-roll, except on the ground of a landlord's improvement or of an alteration in the area of the holding.

Period for which rents as settled are to remain unaltered.

Supplemental.

121. Where an order is made under this chapter on the application of a landlord, or of several landlords or tenants, or for the purpose of settling or averting a serious dispute between tenants and their landlords, all expenses incurred by the Government in carrying out the provisions of this chapter in any local area, including the salaries of all officers employed exclusively in carrying out those provisions therein, and such portions as the Local Government may, from time to time, fix of the salaries of officers employed in carrying out those provisions therein in addition to their other public duties, shall be defrayed by the landlords and tenants in that local area whose rents are ascertained or settled under this chapter, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable from him as if it were an arrear of revenue due by him.

Supplemental. Section 163.

Expenses of proceedings under Chapter

122. When the particulars mentioned in section 111, clause (*b*), have been recorded under this chapter in respect of any tenancy, the presumption under section 64 shall not thereafter apply to that tenancy.

Presumption as to fixity of rent not to apply where record has been prepared.

CHAPTER XI.

TABLES OF RATES.

[B. B., ss. 131 & 132] Section 62.

123. The Local Government may, by an order in the official Gazette, direct a Revenue-officer to take steps to prepare for any local area, with the aid of such assessors as the Local Government may appoint in this behalf, a table showing for each class of land comprised in that area the rate of rent fairly and equitably payable by occupancy-raiyats.

Power to direct preparation of table.

[B. B., s. 133] Section 63.

124. The table shall specify—

Contents of table.

(*a*) the several classes of land for which, having regard to the nature of the soil, situation, means of irrigation and other like considerations, it is necessary to fix different rates of rent; and

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(Chapter XI.—Tables of Rates. Secs. 125—134.)

[B.B., s. 133.] Section 64.

(*b*) the rate of rent fairly and equitably payable by occupancy-raiyats holding land of each such class;

Principle on which rent-rates are to be fixed.

125. In fixing the rate of rent for any class of land under section 124 regard shall be had—

(*a*) to the rates of rent ordinarily payable by occupancy-raiyats for land of that class at the time when the table is prepared;

(*b*) to the average prices of staple food crops in the locality or at the usual markets about the time at which those rates were fixed, or, if that time or the average prices about that time cannot readily be ascertained, to the average prices about any other time which it may appear equitable and practicable to take for the purpose of comparison;

(*c*) to the average prices of staple food crops in the locality or at the usual markets at the time at which the table is prepared; and

[C. B., s. 23, (*b*). B. B., s. 24, *b*).]

(*d*) to the following rule, namely, that when the rate of rent for any class of land is raised on account of an increase in the average prices of staple food crops the new rate shall not bear to the old rate a higher proportion than the increased average prices bear to the former average prices:

[C. B., s. 23, (*c*). B. B., s. 24, (*c*).]

Provided that the rate fixed for any class of land shall not exceed the existing rate by more than four annas in the rupee.

[B.B., s. 137.] Section 65.

126. When the Revenue-officer has prepared the table, he shall publish it in the local area to which it relates, in the vernacular language prevailing in that local area, in such manner as the Local Government may from time to time prescribe.

Local publication of the table.

[B.B., s. 138.] Section 66.

127. Any person objecting to any entry in the table may present a petition to the Revenue-officer within a period of one month after the publication; and the Revenue-officer, with the aid of the assessors, shall consider any such objection, and may alter or amend the table.

Revenue-officer to deal with objections.

[B.B., s. 139.] Section 67.

128. If no objection is made within the said period of one month, or, where objections are made, after those objections have been disposed of, the Revenue-officer shall submit the table, together with his proceedings, a report setting forth the grounds of his decision on each point, and any petitions of objection which may have been received, through the Commissioner of the Division to the Board of Revenue for approval.

Table to be submitted to superior Revenue-authorities.

[B. B., s. 140.] Section 68.

129. The Board of Revenue may amend the table submitted under the last foregoing section in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made, or may return the case for further enquiry.

Proceedings of Board of Revenue thereupon.

[B. B., s. 141.] Section 69.

130. When a table of rates has been sanctioned by the Board, it shall be submitted to the Local Government, which, after considering such objections as may be submitted to it in writing, may amend the table in any manner it thinks fit, and may direct, if it thinks fit, that the table or amended table shall be published in the official Gazette with a specification of the local area to which it applies.

Publication of table after final sanction.

[B. B., s. 143.] Section 70.

131. A table for any local area published under the last foregoing section shall come into force on the date on which it is so published, and shall continue in force for such period, not less than fifteen or more than thirty years, as the Local Government at the time of publication may direct.

Period for which table remains in force.

[B. B., s. 142.] Section 71.

132. The publication of a table under section 130 shall be conclusive evidence in any proceeding under this Act—

Table to be conclusive evidence.

(1) that the proceedings for the preparation of the table have been duly conducted in accordance with this Act; and

(2) that, except as in this Act provided, the rates shown in the table for each class of land are the fair and equitable rates payable for land of that class by occupancy-raiyats within the local area to which the table applies.

Section 72.

133. All expenses incurred by the Government in preparing a table of rates for any local area, including the salaries of all officers employed exclusively in its preparation, and such portions as the Local Government may from time to time fix of the salaries of officers employed in its preparation in addition to their other public duties, shall be defrayed by occupancy-raiyats and their landlords in that local area in such proportions as the Local Government may from time to time determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable from him as if it were an arrear of land-revenue due by him.

Expenses incurred in preparing table how defrayed.

[B. B., s. 144.] Section 73.

134. When a table is in force under the foregoing sections for any local area, the landlord of any holding within that area, held by an occupancy-raiyat at a money rent, may institute a suit to enhance the rent then payable on the ground that it is below that which would be payable at the rates shown in the table; and the Court

Suit to enhance where table is in force.

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shall enhance the rent in accordance with the rates shown in the table: Provided that—

1st.—Where the rent of any land comprised in the holding would, by reason of a change having taken place in or in regard to the land since the raiyat or his predecessor in interest began to hold it, be fixed under this section at a higher rate, and would, but for that change, have been fixed under this section at a lower rate, the following rules shall apply, namely:—

(*a*) if the change has been effected solely by the agency or at the expense of the raiyat or his predecessor in interest, the Court shall fix the rent of that land at the lower rate;

(*b*) if the change has been effected partly by the agency or at the expense of the landlord or his predecessor in interest, and partly by the agency or at the expense of the raiyat or his predecessor in interest, the Court shall fix the rent of the land at such rate intermediate between the higher rate and the lower rate as, having regard to all the circumstances of the case, it thinks fair and equitable; and

[C. B. s. 23. 4. (*a*). 3 B., s. 24, (*f*).]

(*c*) if it is not proved that the change has been effected by the agency or at the expense of the landlord or the raiyat, or the predecessor in interest of either of them, the Court shall fix the rent of the land at a rate equal to the lower rate, together with half the difference between the higher rate and the lower rate.

2ndly.—When the raiyat proves that by contract or by custom, or on some equitable ground, he is entitled to hold at a rate lower than the rate applicable under this section, the Court shall fix the rent at the lower rate.

3rdly.—Section 49 shall apply to all decrees for enhancement passed under this section, and section 50 shall apply to all suits for enhancement under this section as if they were suits for enhancement under Chapter V on the ground that the rent is below the prevailing rate or on the ground of an increase in prices.

Illustrations.

(*a*) The rates shown in the table for land of a certain description are—

when the land is irrigated from a well . Rs. 4 per acre,
when the land is not so irrigated . . Rs. 2 „

The holdings of *A*, *B*, *C* and *D*, occupancy-raiyats, are composed of land of that description irrigated from wells constructed on these holdings respectively.

The well on A's holding is an ancient one existing from a time anterior to the tenancy: that on B's holding has been constructed by the landlord since the commencement of the tenancy: that on C's holding has been constructed by the raiyat: that on D's holding has been constructed by the landlord and raiyat, each contributing some portion of the labour and materials. The rents of the holdings of A and B must be fixed at Rs. 4 per acre, that of C's holding at Rs. 2 per acre, and that of D's holding at such rate intermediate between Rs. 2 and Rs. 4 as the Court thinks fair and equitable.

(*b*) The rates shown in the table for land of a certain description are as follows:—

when such land is irrigated from a branch of a river . . . . . Rs. 4 per acre,
when such land is not so irrigated . . Rs. 2 „

The holdings of E and F, occupancy-raiyats, are composed of land of that description, and were not irrigable until 40 years ago, when, owing to a change in the course of a neighbouring river, a new branch established itself contiguous to them. E has been in occupation of his holding 50 years, F only 30; the rent of E's holding must be fixed at Rs. 3, that of F's holding at Rs. 4.

CHAPTER XII.

RECORD OF PROPRIETOR'S PRIVATE LANDS.

[B.B. ss. 76 to 82.] Sections 7 to 13.

135. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of section 30.

Power for Government to order survey and record of proprietor's private lands.

136. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Power for Revenue-officer to record private land on application of proprietor or tenant.

137. When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 113, 114, 115 and 116 shall apply.

Procedure for recording private land.

[C. B., s. 81. B.B., ss. 3 & 75.] Section 5.

138. (*1*) The Revenue-officer shall record as a proprietor's private land—

Rules for determination of proprietor's private land.

(*a*) Land which is proved to have been cultivated as khámár, zírat, sír, nij, nij-jot or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village custom as proprietor's khámár, zírat, sír, nij, nij-jot or kamat.

(*2*) In determining whether any other land ought to be recorded as a proprietor's private land

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the officer shall have regard to local custom and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

CHAPTER XIII.

DISTRAINT.

[B. B., ss. 101, 104, 123.] Section 166.

Cases in which an application for distraint may be made.

139. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator,

(*a*) any crops or other products of the earth standing or ungathered on the holding;

(*b*) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead:

Provided that an application shall not be made under this section—

VII (B. C.) of 1876.

(*1*) by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or

(*2*) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or

[B. B., ss. 71, 125.]

(*3*) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord.

[B. B., ss 104-5.] Section 167.

Form of application.

140. (*1*) Every application under the last foregoing section shall specify—

(*a*) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;

(*b*) the name of the tenant;

(*c*) the period in respect of which the arrear is claimed;

(*d*) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable;

(*e*) the nature and approximate value of the produce to be distrained;

(*f*) the place where it is to be found, or such other particulars as may suffice for its identification; and

(*g*) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

XIV of 1882.

(*2*) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints; and, if the application so verified contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, that 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.

[B. B., ss. 105 & 106.] Section 168.

Procedure on receipt of application.

141. (*1*) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(*2*) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(*3*) Where a Court cannot forthwith admit or reject an application under sub-section (*2*), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(*4*) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may if it thinks fit make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

[B. B., s. 107.] Section 169.

Execution of order of distraint.

142. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court:

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D. § 111.]

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

B. B., s. 108.] Section 170.

Service of demand and account.

143. (*1*) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

(*2*) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(*3*) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on the outer door of the house in which he usually resides.

B. B., ss. 109 and 110.] Section 171.

Right to reap, &c., produce.

144. (*1*) A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation.

(*2*) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(*3*) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

[B. B., s. 113.] Section 172.

Sale proclamation to be issued unless demand is satisfied.

145. (*1*) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained and the demand for which it is distrained, and notifying that he will, at a place and on a specified day, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction:

Provided that when the crops or products distrained from their nature admit of being stored but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(*2*) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

[B. B., s 114.] Section 173.

Place of sale.

146. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the distraining officer is of opinion that it is likely to sell there to better advantage.

[D., s. 111.] Section 174.

When produce may be sold standing.

147. (*1*) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

(*2*) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

[B.B., s. 115.] Section 175.

Manner of sale.

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

[B. B., s. 116.] Section 176.

Postponement of sale.

149. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorised to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

[B. B., s. 117.] Section 177.

Payment of purchase-money.

150. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

[B. B., s. 118.] Section 178.

Certificate to be given to purchaser.

151. 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.

[B. B., s. 119.] Section 179.

Proceeds of sale how to be applied.

152. (*1*) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the

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costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made by the Local Government in this behalf.

(2) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

[B. B., s. 120.] Section 180.

153. 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.

Certain officers may not purchase.

[B. B., ss. 111, 112 & 123.] Section 181.

154. (1) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 143, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn.

Procedure where demand is paid before the sale.

(2) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his tenant's sub-letting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

[B. B., s 124.] Section 182.

155. (1) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Amount paid by under-tenant for his lessor may be deducted from rent.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

[B. B., s. 126.] Section 183.

156. When land is sub-let, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

Conflict between rights of superior and inferior landlords.

Section 184.

157. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid to the owner of the property under section 152 without the sanction of the Court by which the order of attachment or sale was issued.

Distraint of property which is under attachment.

158. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 140 in any case in which such an application is not permitted by section 139 may institute a suit against the applicant for the recovery of compensation.

Suit for compensation for wrongful distraint.

CHAPTER XIV.

JUDICIAL PROCEDURE.

159. (1) The High Court may, from time to time, with the approval of the Local Government, make rules declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

Power to modify Civil Procedure Code in application to landlord and tenant suits.

XIV of 1882.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits.

XIV of 1882.

Section 188.

160. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the recovery of the land in respect of which the relation of landlord and tenant exists between the parties.

Jurisdiction in proceedings under Act.

XIV of 1882.

(2) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall

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be made to the Court which would have jurisdiction to entertain a suit for the recovery of possession of the holding.

[D., § 169. C. B., s. 150. B. B., s. 167 (a).] Section 189.

161. Every náib or gumáshta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending.

Náibs or gumáshtas to be recognized agents.

XIV of 1882.

[D § 173. C. B., s. 147. B. B., s. 164.] Section 190.

162. The particulars referred to in section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may from time to time prescribe in this behalf.

Special register of suits.

XIV of 1882.

[C. B., s. 165. B. B., s. 187.] Section 191.

163. The following rules shall apply to suits for the recovery of rent:—

Procedure in rent-suits.

XIV of 1882.

[D., §§ 149 & 185. C. B., s. 167. B. B., s. 189.] Section 192.

(a) Sections 121 to 127 (both inclusive), 129, 305, and 320 to 325C (both inclusive) of the Code of Civil Procedure shall not apply to any such suit.

(b) The plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent, and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification.

XIV of 1882.

[D., § 192. C. B., s. 174. B. B., s. 195.] Section 193.

(c) The summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only.

Section 194.

(d) The service of the summons may, if the Court so directs, be effected, either in addition to or in substitution for any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866.

XIV of 1882.

[D., § 108. C. B., s. 184. B. B., s. 206.] Section 195

[BB., s. 214.] Section 196.

(e) A written statement shall not be filed without the leave of the Court.

XIV of 1882.

[D., §§ 177 & 228. C. B., ss. 155 & 197. B B., ss. 171 & 219.] Section 197.

(f) The rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply, whether an appeal is allowed or not.

(g) The Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears.

(h) Notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

XIV of 1882. [C. B., s. 198. B. B., s. 220.] Section 200.

Section 199.

164. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Payment into Court of money admitted to be due to third person.

(2) Where such a payment is made the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within *three months* from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff, money paid to him under sub-section (3):

165. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Payment into Court of money admitted to be due to landlord.

166. When a defendant is liable to pay money into Court under either of the last foregoing sections, if the Court thinks that there are sufficient reasons for ordering that the money be paid by instalments, it may take cognizance of the defendant's plea on his paying into Court such instalment as the Court directs.

Provision as to payment by instalments.

Section 199 (2).

167. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person as the case may be.

Court to grant receipt.

[D., § 179. C. B., ss. 157 & 220. B. B., ss. 173 & 243.] Section 198.

168. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

Appeals in rent-suits.

(a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(*b*) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity; and may pass such order as the District Judge thinks fit.

[C. B., ss. 96 & 98 (*b*). B. B., ss. 128 & 130, cl. (*b*).] Section 201.

169. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing for special reasons a later date from which any such decree shall take effect.

Date from which decree for enhancement takes effect.

[B. B., ss. 21 (*e*), 31, 44 & 45 Vic., C. 41, s. 144] Section 202.

170. (*1*) A suit for the ejectment of a tenant, on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment, shall not be entertained unless the landlord has requested the tenant, where the damage or breach is capable of remedy, to remedy the same, and, in any case, to pay reasonable compensation for the damage or breach, and the tenant has failed to comply within a reasonable time with that request.

Relief against forfeitures.

(*2*) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the damage or breach, and whether, in the opinion of the Court, the damage or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the damage or breach is declared to be capable of remedy, to remedy the same.

(*3*) The Court may, from time to time, for special reasons, extend a period fixed by it under subsection (*2*).

(*4*) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the damage or breach is declared by the Court to be capable of remedy, remedies the damage or breach to the satisfaction of the Court, the decree shall not be executed.

[C. B., s. 80. B. B., s. 73.] Section 203.

Rights of ejected raiyats in respect of crops and land prepared for sowing.

171. The following rules shall apply in the case of every raiyat ejected from a holding:—

(*a*) When the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment.

(*b*) When the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value.

(*c*) But a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage.

(*d*) If the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

[C. B., s. 80. B. B., s 73.] Section 204.

Section 205.

Adjustment of mutual claims in ejectment-proceedings.

172. (*1*) In all suits and proceedings for ejectment, the Court shall inquire into and determine all claims under this Act by the landlord against the tenant as such, or by the tenant against the landlord as such.

Section 206.

(*2*) If it appears to the Court that the amount payable by the landlord to the tenant as such exceeds the amount payable by the tenant to the landlord as such, the decree or order for ejectment (if any) shall, unless the landlord and tenant come to an arrangement regarding the payment of the excess sum, specify a time within which it must be paid into Court.

(*3*) If it is so paid within the time specified, the Court shall eject the tenant; and

if it is not so paid, the Court shall refuse to eject the tenant.

173. When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Power for Court to fix fair rent as alternative to ejectment.

[C. B., s. 151. B. B., s. 168.] Section 207.

174. (*1*) The Court having jurisdiction to determine a suit for the recovery of land held by a tenant may, on the application of either the landlord or the tenant, determine all or any of the following matters, namely:—

Application to determine incidents of tenancy.

(*a*) the situation, quantity and boundaries of the land held by the tenant;

(*b*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under raiyat, and, if he is a tenure-holder, whether his rent is liable to enhancement; and

(*c*) the rent payable by him at the time of the application.

(*2*) If in the opinion of the Court any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government by rule directs.

XIV of 1882.

(*3*) The order on any application under this section shall have the effect of and be subject to the like appeal as a decree.

CHAPTER XV.

SALE FOR ARREARS UNDER DECREE.

175. Where a transferable holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as 'protected interests' but with power to annul the interests defined in this chapter as 'incumbrances.'

General powers of purchaser as to avoidance of incumbrances.

Provided as follows:—

(*a*) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;

(*b*) the power to annul shall be exerciseable only in manner by this chapter directed.

[D. §§ 12 (11) and 155. C. B., ss. 226, Expl., & 210. B. B., ss. 228. Expl., & 232.] Section 208 (*1*).

176. The following shall be deemed to be protected interests within the meaning of this Chapter—

Protected interests.

(*a*) any under-tenure existing from the time of the permanent settlement;

(*b*) any under-tenure recognized by the settlement proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

(*c*) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made;

(*d*) any right of occupancy;

(*e*) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and

(*f*) any right or interest which the landlord at whose instance the holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

Meaning of "incumbrance" and "registered and notified incumbrance".

177. For the purposes of this Chapter—

Section 208, (*1*).

(*a*) the term "incumbrance" used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section.

[C. B., s. 206 Expl. B. B., s. 228 Expl.] Section 208 (*2*). III of 1877.

(*b*) The term "registered and notified incumbrance" used with reference to a holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by an instrument registered under the Indian Registration Act, 1877, and of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided.

[C. B., s. 201. B. B., s. 223.] Section 209.

178. When a decree has been passed for an arrear of rent due for a transferable holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attachment and sale of the holding in execution of the decree, he shall produce a statement of the annual rent of the holding, and, if the holding is a permanent tenure, a copy of so much of the register kept under Chapter III of this Act as relates to the tenure.

Application for sale of holding.

XIV of 1882.

[D. § 152. C. B., s. 208. B. B., s. 225.] Section 210.

179. (*1*) When an order has been passed for the sale of a holding upon an application made under the last foregoing section,

Proclamation announcing sale.

Bengal Tenancy Bill.

(*Chapter XV.—Sale for Arrears under Decree. Secs. 180--186.*)

the proclamation made under section 287 of the Code of Civil Procedure shall, in addition to stating and specifying the particulars mentioned in that section, announce—

XIV of 1882.

(*a*) in the case of a tenure, that the tenure will first be put up to auction subject to the registered and notified incumbrances and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

(*b*) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(2) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published in such manner as the Local Government may, from time to time, direct in this behalf.

[C. B., s. 206. B. B., s. 228 (*a*) and Expl.] Section 211.

180. (*1*) When a tenure has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure shall be sold subject to such incumbrances.

Sale of tenure subject to registered and notified incumbrances, and effect thereof.

(2) The purchaser at a sale under this section may in manner provided by section 184, and not otherwise, annul any incumbrance upon the tenure not being a registered and notified incumbrance.

[C. B., s. 207 B. B., s. 229 (*a*) Section 212 (*1*).

181. (*1*) If the bidding for a tenure put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid; and if the decree-holder thereupon desires that the tenure be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure shall be put up to auction and sold with power to avoid all incumbrances.

Sale of tenure with power to avoid all incumbrances, and effect thereof.

XIV of 1882.

[D., § 155. C. B., s. 210. B. B., s. 232.] Section 212 (*2*).

(2) The purchaser at a sale under this section may, in manner provided by section 184, and not otherwise, annul any incumbrance on the tenure.

182. The foregoing sections shall apply to a holding at a fixed rent or rate of rent as if it were a tenure.

Application of foregoing provisions to holdings at fixed rates.

[B. B., s. 228. (*b*).] Section 213.

183. (*1*) When an occupancy-holding has been advertised for sale under section 179, it shall be put up to auction and sold with power to avoid all incumbrances.

Sale of occupancy-holding with power to avoid all incumbrances, and effect thereof.

(2) The purchaser at a sale under this section may in manner provided by section 184, and not otherwise, annul any incumbrance on the holding.

Section 214.

184. (*1*) A purchaser having power to annul an incumbrance under any of the foregoing sections and desiring to annul the same, may, within one year from the date on which he first has notice of the incumbrance, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

Procedure for annulling incumbrances under the foregoing sections.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for a service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

[B B., s. 225 (*c*).] Section 215.

185. (*1*) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

[D. § 246. C. B., s. 211. B. B., s. 233.] Section 216.

186. (*1*) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say:—

Rules for disposal of the sale-proceeds.

XIV of 1882.

(*a*) There shall first be paid to the decree-holder the costs incurred by him in bringing the holding to sale.

(*b*) There shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made.

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(*Chapter XV.—Sale for Arrears under Decree. Secs. 187—193.*)
(*Chapter XVI.—Summary Sale for Arrears. Sec. 194.*)

(*c*) If there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the holding between the institution of the suit and the date of the sale, but not more than six months after the date of the final decree.

(*d*) The balance (if any) remaining after the payment of the rent mentioned in clause (*c*) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (*c*), the Court shall determine the dispute, and the determination shall have the force of a decree.

XIV of 1882. [D., § 153. C. B., s. 204. B. B., s. 226.] Section 217.

Holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.

187. (*1*) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a holding attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of a holding in execution of such a decree has been made, the holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the holding on the ground that the decree has been satisfied out of Court.

(3) Nothing in this section shall affect the right of any person to institute a suit to set aside the sale of a holding under this Chapter.

[D., §§ 35, 36, 154. C. B., s. 205. B. B., s. 227.] Section 218.

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the holding.

188. (*1*) When any person having, in a holding advertized for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,

(*a*) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per cent. per annum and secured by a mortgage of the holding to him;

(*b*) his mortgage shall take priority of every other charge on the holding other than a charge for arrear of rent; and

(*c*) he shall be entitled to possession of the holding as mortgagee and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

[D., §§ 35, 36, 154. C. B., s. 205. B. B., s. 227.] Section 219.

Inferior tenant paying into Court may deduct from rent.

189. When a holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and, that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

XIV of 1882. [C. B., s. 208 (1). B. B., s. 230 (1).] Section 220.

Decree-holder may bid at sale; judgment-debtor may not.

190. (*1*) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a holding is sold under this chapter may, without the permission of the Court, bid for or purchase the holding.

(2) The judgment-debtor shall not bid for or purchase a holding so sold.

XIV of 1882. Section 221.

Operation of sections 313 and 326 of Code of Civil Procedure excluded.

191. Sections 313 and 326 of the Code of Civil Procedure shall not apply to any sale under this Chapter.

Section 222.

III of 1877.

Registration of certain instruments creating incumbrances.

192. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any transferable holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

[C. B., s. 209, Expl. B. B., s. 2, Expl.] Section 223.

III of 1877.

Notification of incumbrances to landlord.

193. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a transferable holding and creating an incumbrance on the holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the manner prescribed in Part VII of the Indian Registration Act, 1877, for the service of summons.

CHAPTER XVI.

SUMMARY SALE FOR ARREARS.

Sale of patní tenures.

[D., § 156. C. B., s. 212. B. B., s. 234.] Section 224.

Right of proprietor to recover arrears from patnídár by summary sale.

194. If default is made in payment of the rent due in respect of a patní tenure held immediately from a proprietor, the proprietor

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(Chapter XVI.—Summary Sale for Arrears. Secs. 195—200.)

may, in addition to any other remedy given him by law, apply for the summary sale of the tenure in accordance with the rules contained in the following sections of this Chapter.

Bengal Regulation VIII of 1819, s. 8, cl. (2). Schedule III.

195. (*1*) On the first day of Baisákh, that is, at the commencement of the following year from that for which the rent is due, the proprietor may present a petition to the Collector, containing a specification of any balances that may be due to him on account of the expired year, in respect of all or any of the tenures described in the last foregoing section.

Application for sale at beginning of year.

(*2*) The petition shall then be stuck up in some conspicuous part of the Collector's office, with a notice that if the amount claimed is not paid before the first of Jeth following, the tenures of the defaulters will on that day be sold by public sale in liquidation.

(*3*) The proprietor shall cause a similar notice to be stuck up at his own sadr kachari and a copy or extract of such part of the notice as applies to the individual case to be sent and similarly published at the kachari at which the principal business of the tenure is transacted, or at the principal town or village on the land of the defaulter's tenure.

(*4*) The proprietor shall be exclusively answerable for the observance of the forms prescribed by this section.

196. (*1*) The notice required to be sent into the mufassal shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager, for the same; or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

Service of notice.

(*2*) If the people of the village object or refuse to sign their names in attestation, the peon shall go to the office of the nearest munsif, or, if there should be no munsif, to the nearest police-station, and there make voluntary oath of the same having been duly published. A certificate to this effect shall be signed and sealed by the said officers and delivered to the peon.

(*3*) If it appears from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the fifteenth day of the month of Baisákh, it shall be a sufficient warrant for the sale to proceed upon the day appointed.

Bengal Regulation VIII of 1819, s. 8, cl. (3). Schedule III.

197. On the first day of Kártik, in the middle of the year, the proprietor may present a similar petition, with a statement of any balances that may be due on account of the rent of the current year, up to the end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first day of Aghan, unless the whole of the advertised balance is paid before the date in question, or so much of it as will reduce the arrear, including any intermediate demand for the month of Kártik, to less than one-fourth or a four-anna proportion of the total demand of the proprietor, according to the kistbandí, calculated from the commencement of the year to the last day of Kártik.

Application for sale in middle of year.

198. (*1*) When a notice has been issued under the foregoing sections in respect of an arrear alleged to be due by a tenure-holder, the tenure-holder may, at any time before the day fixed therein for the sale of the tenure, present to the Collector a petition contesting the demand wholly or in part.

Proceedings when tenure-holder contests demand.

(*2*) The Collector on receiving a petition under sub-section (*1*) shall issue a summons to the proprietor requiring him to appear at a time and place specified therein, and show cause why the sale should not be stayed or the amount of the demand reduced, as the case may be, and shall, if practicable, hear the parties or such of them as appear, and determine the issues between them before the time fixed for the sale.

(*3*) If before the time fixed for the sale the Collector decides that no part of the arrear claimed is due, he shall dismiss the proprietor's application.

(*4*) If before that time he decides that any part of the arrear claimed is not due he shall reduce the demand accordingly, and his decision shall for the purposes of the proceedings under this chapter be conclusive.

(*5*) In cases not provided for by sub-sections (*3*) and (*4*) the tenure-holder's petition shall be dismissed, but such dismissal shall not affect his right to institute a suit to set aside the sale.

Bengal Regulation VIII of 1819, s. 14.

199. Except as provided by the last foregoing section, a tenure in respect of which a notice has been issued under the foregoing sections shall be sold on the day fixed by the notice, unless before sunset of the previous day the amount of the demand, or, when that amount has been reduced under the last foregoing section, the reduced amount has been deposited in the Collector's office by the defaulter or some other person for payment to the landlord.

Tenure to be sold unless arrear deposited.

Bengal Regulation, VIII of 1819, s. 10. Schedule III.

200. (*1*) At the time of the sale, the notice previously stuck up in the kacharí shall be taken down, and the lots be called up successively in the order in which they may be found in the notice.

Forms to be observed in case of sale.

(*2*) A person shall attend on the part of the proprietor with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, with the receipt for, or certificate of, the notice directed to be published in the mufassal.

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(Chapter XVI.—Summary Sale for Arrears. Secs. 201—205.)

(*3*) No lot shall be put up to sale until the statement produced has been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice has been read. The observance of these forms shall be recorded in a separate rubakari to be held upon each lot sold.

(*4*) If the sale is under a petition presented on the first day of Kártik the Kistbandí of the defaulter shall likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale; and the sale shall not take place unless this is ascertained.

(*7*) The proprietor shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, and the officer making the sale shall not be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Chapter.

Bengal Regulation VIII of 1819, s. 9. Schedule III.

201. (*1*) All sales of tenures under this Chapter shall be made in public kachari.

Mode of conducting sale.

(*2*) The land shall be sold to the highest bidder, and every one except the defaulter shall be free to bid.

(*3*) Fifteen per cent. of the purchase-money shall be paid immediately the lot is knocked down

(*4*) The officer conducting the sale may refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours.

(*5*) If the fifteen per cent. is not paid in cash within two hours of the sale, or an equivalent amount in Government securities is not lodged, the lot shall be resold on the same day.

(*6*) If the remainder of the purchase-money is not paid by noon of the eighth day, notice shall be given of resale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the bázár of the sadr station of the district.

(*7*) The lot shall then be resold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per cent. already made, and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent sale; such deficiency to be levied by the process for the execution of decrees of the Civil Courts.

(*8*) The forfeited deposit shall be applied to defray the expenses of the sale, and the surplus shall be credited to Government.

Bengal Regulation VIII of 1819, s. 15. Schedule III.

202. (*1*) When the entire amount of the purchase-money has been paid in by the purchaser of a tenure under this chapter, the Collector shall grant him a certificate of the payment.

Title of purchaser.

(*2*) Thereupon the purchaser shall acquire the tenure with power to avoid, in manner prescribed by section 184 for the avoidance of incumbrances, all liens, sub-tenancies, easements and other rights or interests created on the tenure by the tenure-holder or any of his predecessors in interest or any person claiming under him or them, except—

(*a*) a right of occupancy;

(*b*) a right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; or

(*c*) any right or interest created under a power expressly conferred by the written instrument by which the tenure was created.

Bengal Regulation VIII of 1819, s. 15. Schedule III.

203. When the purchaser of a tenure under this chapter has obtained a certificate in respect of the same under the last foregoing section, and the transfer of the tenure to him has been registered under Chapter III, he may apply to the Collector to put him in possession of the tenure, and the Collector shall thereupon put him in possession of the same, and for this purpose shall exercise all the powers conferred by the Code of Civil Procedure on a Civil Court giving possession to a purchaser at a sale in execution of a decree.

Purchaser to be put in possession.

XIV of 1882.

Bengal Regulation VIII of 1819, s. 13. Schedule III.

204. When any person having in a tenure advertized for sale under this chapter an interest which would be voidable upon such sale deposits in the Collector's office the amount requisite under section 199 to prevent the sale, the provisions of section 188 shall apply, and if the person is a tenant inferior to the tenure-holder the the provisions of section 189 shall also apply, as if the tenure was a holding advertized for sale under Chapter XV, and the payment had been made into Court to prevent the sale.

Recovery of money deposited by person interested to stay sale.

Bengal Regulation VIII of 1819, s. 14. Schedule III.

205. (*1*) Any person aggrieved by a sale of a tenure effected under cover of the provisions of this chapter but not warranted by those provisions may institute a suit against the proprietor, at whose instance the sale was effected, to set aside the sale and recover compensation for the damage caused to him thereby.

Suit to set aside sale.

(*2*) The purchaser of the tenure shall be made a party to the suit, and shall, if the sale is set aside, be entitled to recover in the suit from the proprietor compensation for the damage (if any) suffered by him.

Bengal Tenancy Bill.

(Chapter XVI.—Summary Sale for Arrears. Secs. 206—209.)

(Chapter XVII.—Contract and Custom. Secs. 210—213.)

Bengal Regulation VIII of 1819, s. 17, cls. (5) and (6). Schedule III.

206. When a tenure has been sold under this chapter, any person having an interest therein which is under section 202 voidable by the purchaser may, within two months from the date of the sale, institute a suit against the defaulter to recover compensation for the damage caused to him by the sale:

Suit for compensation by person whose interest becomes voidable in consequence of sale.

Provided that no such suit shall be maintainable by any tenant inferior to the defaulter if at the time of the sale any arrear of rent was due from him.

Bengal Regulation VIII of 1819, s. 17. Schedule III.

207. (*1*) The proceeds of a sale under this chapter shall be dealt with as follows, namely:—

Disposals of proceeds of sales.

(*a*) One per cent. shall first be deducted from the proceeds, and shall be carried to the account of the Government, for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions of this chapter.

(*b*) The arrear on account of which the sale may have been made (with interest and all charges incurred in bringing the tenure to sale) shall next be paid to the landlord.

(*c*) The balance (if any) remaining after the payments prescribed by clauses (*a*) and (*b*) shall be forthwith sent by the officer conducting the sale to the Treasury of the Collector, to be there retained in deposit to answer the claims of persons who may obtain decrees for compensation under section 206, until the expiration of two months from the date of the sale, and if within that period any suits are instituted under that section, until all such suits have been finally decided.

(*d*) The balance retained under clause (*c*) shall be applied in the first instance to the payment of the amounts of the decrees (if any) passed against the defaulter under section 206, being distributed rateably among the decree-holders according to the amounts of those decrees, when it is insufficient to discharge those amounts in full.

(*e*) The residue (if any) of the said balance shall be payable to the defaulter.

(*2*) Any person interested in money deposited under clause (*c*) may withdraw the whole or any part thereof, on substituting Government securities, bearing interest, in lieu of the money so held in deposit; such securities to be taken at the rate of discount or premium of the day, as shown by the *Government Gazette* last received.

208. When any day specified in this chapter is a Sunday or holiday anything required or authorized under this chapter to be done on that day may be done on the next following day not being a Sunday or holiday.

Provision as to Sundays and holidays.

Sale of other tenures.

209. If provision is made by law for the registration in a public register of any tenures other than those saleable under the foregoing sections of this chapter, those sections shall, subject to such modifications as the Local Government from time to time by rule prescribes, apply to the tenures so registered.

Sale of other tenures.

Modified application of Chapter to other registered tenures.

CHAPTER XVII.

CONTRACT AND CUSTOM.

210. The provisions of this Act in respect of the following matters shall take effect notwithstanding any contract to the contrary:—

Provisions to take effect notwithstanding contract.

(*a*) The acquisition of the status of a settled raiyat and of the occupancy-right (sections 24, 25 and 26).

(*b*) The incidents of the occupancy-right specified in section 31.

(*c*) The right of an occupancy-raiyat to demand a reduction of rent under section 51.

(*d*) The right of either landlord or tenant to demand a commutation of a produce rent under section 53.

(*e*) The protection afforded by the Act to a non-occupancy-raiyat and an under raiyat from ejectment except on specified grounds (sections 58, 59, 60 and 63).

(*f*) The right of a tenant to a reduction of rent on account of the diminution of the area of his holding (section 66).

(*g*) The right of the raiyat to make improvements and claim compensation for them (sections 88, 89, 90 and 93).

(*h*) The protection afforded to all tenants against ejectment except in execution of a decree (section 98).

211. Nothing in this Act shall be deemed to prevent a landlord in a permanently-settled area from granting a permanent mukarrarí lease an any terms agreed on between him and his tenant.

Permanent mukarrarí leases.

212. Nothing in this Act shall affect any contract for the reclamation of waste land.

Contracts for reclamation.

213. (*1*) Notwithstanding anything in this Act, a raiyat holding land of the kind known as chur or dearáh,

Chur and dearah lands.

Bengal Tenancy Bill.

(Chapter XVII.—Contract and Custom. Secs. 211—217.)

(Chapter XVIII.—Limitation. Secs. 218 & 219.)

(Chapter XIX.—Supplemental. Secs. 220—222.)

that is to say, land ordinarily liable to improvement or deterioration by fluvial action, shall not acquire a right of occupancy in the land until he has held the land for twelve continuous years; and, until he acquires a right of occupancy in the land, shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(*2*) But the Court may, on the application of either the landlord or the tenant, declare that any land has ceased to be chur or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

214. Nothing in this Act shall affect the conditions, customary or otherwise, under which land is held on either of the systems known as the "utbundi" system and the "hal-hasili" system.

Utbundi and hal-hasili systems.

Section 226.

215. Nothing in this Act shall affect any incident of a ghátwálí or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

Saving as to service-tenures.

Section 85.

216. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom.

Homesteads.

217. Nothing in this Act shall affect any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Saving of custom.

Illustration.

[C. B., s. 19. Expl. 4 (*f*), B. B., s. 19, Expl. 4 (*e*), proviso.] Section 4.

The custom that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom accordingly, wherever it exists, will not be affected by this Act.

CHAPTER XVIII.

LIMITATION.

[D., §§ 77, 78 & 79. C. B., s. 92. B. B., s. 98.] Section 224.

218. (*1*) The suits, appeals and applications specified in Schedule IV annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

Limitation in suits, appeals and applications in Schedule IV.

(*2*) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

219. Sections 7, 8 and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in section 218.

XV of 1877. [C. B., s. 93. B. B., s. 99.] Section 225.

Portions of the Indian Limitation Act not applicable to such suits, &c.

CHAPTER XIX.

SUPPLEMENTAL.

Penalties.

220. (*1*) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,

[B. B., ss. 91, 122.]

Penalties for illegal interference with produce.

(*a*) distrains or attempts to distrain the produce of a tenant's holding, or

(*b*) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or

(*c*) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

XLV of 1860.

(*2*) Any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (*1*) shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

Agents and representatives of landlords.

221. (*1*) Any appearance, application or act, in, before or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent of the landlord empowered in this behalf by a written authority under the hand of the landlord.

Agents and representatives of landlords. Section 229.

Power for landlord to act through agent.

(*2*) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent of the landlord empowered as aforesaid to accept service of or receive the same, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(*3*) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

222. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both

Joint-landlords to act collectively or by common agent.

Bengal Tenancy Bill.

(*Chapter XIX.—Supplemental. Secs. 223—228.*)

or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Powers of Revenue-officers.

Powers of Revenue-officers. Section 227.

223. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

Power to make rules regarding procedure and powers of officers.

(*a*) any power exercised by a Civil Court in the trial of suits;

(*b*) power to enter upon any land, and to survey, demarcate and make a map of the same; and

(*c*) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil.

Rules.

Rules. Section 228.

224. (*1*) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

Procedure for making, publication and confirmation of rules.

(*2*) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and in the case of rules made by any other authority, in the prescribed manner: Provided that every such draft shall be published in the official Gazette.

(*3*) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(*4*) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*5*) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

Provisions as to temporarily-settled districts.

Provisions as to temporarily-settled districts. [C. B., ss. 6, Excep., & 17, Exception P. B., ss. 6, Excep., & 16, Exception.] Section 20.

225. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a fixed rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

Saving as to land held in a district not permanently settled.

226. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a fixed rent, and while the lease or contract is in force— [D., § 42.] Section 121.

Power to alter rent in case of new assessment of revenue.

(*a*) land-revenue is for the first time made payable in respect of the land, or

(*b*) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

Rights of pasturage, &c.

227. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like. [D., § 82. C. B., s. 3. B. B., s. 3. "Rent" and "land."] Section 230.

Rights of pasturage, forest-rights, &c.

Savings for special enactments.

228. Nothing in the Act shall affect— **Savings for special enactments.** [D., § 2. C. B., s. 4. Report of Rent Commission, § 3. B. B., s. 4.] Section 4.

(*a*) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;

Savings for special laws.

(*b*) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue-authorities;

(*c*) any enactment relating to the avoidance of tenancies by a sale for arrears of the Government revenue;

(*d*) any enactment relating to the partition of revenue-paying estates; or

(*e*) any other special or local law not repealed either expressly or by necessary implication by this Act.

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(*Schedule I.—Repeal of Enactments.*)

SCHEDULE I.

(*See Section 2.*)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
VIII of 1793	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamíndárs, independent taluqdárs, and other actual proprietors of land in Bengal, Bihár, and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
XII of 1805	A Regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including the parganas of Pattáspur, Kummadichour, and Bagrac, at present included in the zila of Midnapur.	Section 7.
V of 1812	A Regulation for amending some of the rules at present in force for the collection of the Land-revenue.	Sections 2, 3, 4, 26 and 27.
XVIII of 1812	A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	Preamble and Sections 2 and 3.
VIII of 1819	A Regulation to declare the validity of certain tenures, and to define the relative rights of zamíndárs and patní taluqdárs; also to establish a process for the sale of such taluqs in satisfaction of the zamíndár's demand of rent, and to explain and modify other parts of the system established for the collection of rents generally throughout Bengal.	The whole Regulation.

SCHEDULE I—*contd.*

Number and year.	Subject of Regulation.	Extent of repeal.
I of 1820	A Regulation for providing that all sales of certain taluqs, made answerable by sale for arrears of the zamíndár's rent, shall be conducted in the mode prescribed by Regulation VIII, 1819, for the sales therein described.	The whole Regulation.
XI of 1825	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In Clause 1 of Section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
VIII of 1865	An Act to amend the law for the sale of such under-tenures as by the title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of arrears of rent due in respect thereof.	The whole Act.
IV of 1867	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
VIII of 1879	An Act to define and limit the powers of Settlement-officers.	The whole Act.

Bengal Tenancy Bill.

(Schedule II.—Extract from Preamble to Regulation VIII of 1819.)

SCHEDULE I—*concld.*

Acts of the Governor General in Council.

Number and year.	Subject of Act.	Extent of repeal.
XXV of 1850	An Act for the forfeiture to Government of deposits made on incomplete sales of land under Regulation VIII, 1819, and Act IV, 1846.	So much as is unrepealed.
XXXIII of 1850	An Act for amending the forms necessary for the sale of patni tenures in Bengal.	The whole Act.
VI of 1853	An Act relating to summary suits for arrears of rent, to sales of patní talúqs and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent.	The whole Act.
X of 1859	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

SCHEDULE II.

(*See Section 3 (10).*)

Extract from Preamble to Regulation VIII of 1819.

"In the exercise of the privilege * * * conceded to zamindárs under direct engagements with Government, there has been created a tenure which had its origin on the estates of the Rájá of Bardwán, but has since been extended to other zamindárís; the character of which tenure is, that it is a talúq created by the zamindár, to be held at a rent fixed in perpetuity, by the lessee and his heirs for ever; the tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused from this obligation at the zamindár's discretion; but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the zamindár.

"By the terms also of the engagements interchanged, it is, amongst other stipulations, provided that, in case of an arrear occurring, the tenure may be brought to sale by the zamindár, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand.

"These tenures have usually been denominated patní talúqs, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons who, on taking such leases, went by the name of darpatní talúqdárs; these, again, sometimes similarly underlet to be patnidárs; and the conditions of all the title-deeds vary in nothing material from the original engagements executed by the first holder."

Bengal Tenancy Bill.

(Schedule III.—Forms of Receipt and Account.)

SCHEDULE III.

FORMS OF RECEIPT AND ACCOUNT.

(*See Sections 70 and 71.*)

FORM OF RECEIPT.

1. Number
2. Year
3. Name of Village_____ Thánd_____
4. Tenant's name_____
5. Particulars of his holding (area, rent, &c.)—

Nukdi Bighás_____ Rs._____

Bauli Bighás_____ Maunds_____ or Rs._____

Sayer { Bunkur Rs._____ ; Julkur Rs._____ ; Phulkur Rs._____

Government Cesses { Road Cess ; Public Works Cess

6. Through whom paid_____
7. Date of payment_____
8. Amount paid (particulars on reverse) Rs._____
9. Signature of Landlord or Authorized Agent

FORM OF RECEIPT.

1. Number
2. Year
3. Name of Village_____ Thánd_____
4. Tenant's name_____
5. Particulars of his holding (area, rent, &c.)—

Nukdi Bighás_____ Rs._____

Bauli Bighás_____ Maunds_____ or Rs._____

Sayer { Bunkur Rs._____ ; Julkur Rs._____ ; Phulkur Rs._____

Government Cesses { Road Cess ; Public Works Cess

6. Through whom paid_____
7. Date of payment_____
8. Amount paid (particulars on reverse) Rs._____
9. Signature of Landlord or Authorized Agent

Section 69 of the Bengal Tenancy Act, 1884, provides as follows:—

Appropriation of payments.

"69. (*1*) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly."

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

Bengal Tenancy Bill.

(Schedule III.—Forms of Receipt and Account.)

Date of Payment.	Nukdi.		Baouli.	Sayer.		Cesses.	
	Current.	Arrear.	Current.	Current.	Arrear.	Current.	Arrear.

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighas	Rate	Rs.	A.	P.
Nukdi					
Government Cesses					

	Bighas	Maunds	Rs.	A.	P.
Baouli					
Julkur					
Bunkur					
Phulkur					

	Maunds	Rs.	A.	P.
4. Demand of the year				
5 Balance of former years (Bakaya)				

	Rs.	A.	P.
6. Total demand (current and arrear)			
7. Paid each on account of { Current demand ...			
{ Arrear demand ...			

	Maunds	Rs.	A.	P.
8. Paid in kind				

	Rs.	A.	P.
9. Balance outstanding at end of year			

10. Landlord's Signature

Bengal Tenancy Bill.

(Schedule III.—Forms of Receipt and Account.)

Date of Payment.	Nukdi.		Baouli.	Sayer.		Cesses.	
	Current.	Arrear.	Current.	Current.	Arrear.	Current.	Arrear.

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighas	Rate	Rs.	A.	P.
Nukdi					
Government Cesses					

	Bighas	Maunds	Rs.	A.	P.
Baouli					
Julkur					
Bunkur					
Phulkur					

	Maunds	Rs.	A.	P.
4. Demand of the year				
5. Balance of former years (Bakaya)				

	Rs.	A.	P.
6. Total demand (current and arrear)			
7. Paid each on account of { Current demand ...			
{ Arrear demand ...			

	Maunds	Rs.	A.	P.
8. Paid in kind				

	Rs.	A.	P.
9. Balance outstanding at end of year			

10. Landlord's Signature

Bengal Tenancy Bill.

(*Schedule IV.—Limitation.*)

SCHEDULE IV.

LIMITATION.

(*See Section 218.*)

PART I.—*Suits.*

Description of Suit.	Period of Limitation.	Time from which period begins to run.
1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year	The date of the breach.
2. For the recovery of an arrear of rent—		
(*a*) when the arrear fell due before a deposit was made on account of the rent of the same holding under section 73.	Six months	The date of the deposit
(*b*) in other cases	Three years	The first day of the Bengali year on which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails.
3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat.	Two years	The date of dispossession.

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
4. From any decree or order under this Act to the Court of a District Judge or Special Judge.	Thirty days	The date of the decree or order appealed against.
5. From any order of a Collector under this Act to the Commissioner.	Thirty days	The date of the order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree, except where the judgment-debtor has by fraud or force prevented the execution of the decree	Three years	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.

Dissents.

I DISSENT from the report of the majority of the Select Committee on the Bengal Tenancy Bill.

The Committee commenced their sittings from the 21st November, 1883, and concluded their labours on the 13th March, 1884. They first met twice a week, and the members were required to give forty-eight hours' notice of amendments to be moved by them. From the 26th January the Committee resolved to sit thrice a week from 2 P. M. to 5-30 P.M.; and notices of amendments were required to be sent in to the Secretary the day before the meeting; and the amendments were circulated on the morning of the meeting. The new arrangement was proposed owing to the amount of work which remained undone, and also owing to the near approach of the Simla season; but I cannot refrain from remarking that, apart from personal inconvenience which it necessarily involved, it left the members scant time, scarcely ten hours, for the preparation of amendments, and six hours for their study, even if one gave his whole time to this work. I considered it my duty to protest against the arrangement, as it was neither fair to the individual members of the Committee, particularly to one in my position, being deprived of the opportunity of consulting those whose views I was understood to represent, nor to the momentous interests involved, but my protest was of no avail. The Committee certainly gave their best attention under the circumstances mentioned to the matters before them, and, as far as I was concerned, shewed me the utmost courtesy and consideration, but there was an unavoidable haste in disposing of momentous questions at the last moment, which could not but be regretted.

I wish the Rules of the Council had permitted the Committee to examine witnesses on practical questions connected with the Bill. The Committee, I doubt not, felt the necessity of this power. At the suggestion of His Honour the Lieutenant-Governor the Committee in an informal way examined some experienced zamíndárs on the subject of sub-letting.

The Bill has undergone material alterations at the hands of the Committee, but its cardinal principles remain unchanged. In some respects the position of the zamíndárs has been made worse than what it was in the original Bill. On some minor points even-handed justice has been done to both the zamíndár and the raiyat. The middle-man of course gains much more than what he has under the existing law, but the *boná-fide* cultivator, in whose behalf the greatest anxiety was evinced in the Committee, will, I fear, be practically worse off than he is at present. I do not now wish to discuss the whole Bill, and will not therefore enter into details on these points.

My objections to the Bill have been principally based on these grounds, firstly, because it goes against the ancient and existing land-law of the country, taking away on the one hand and conferring on the other rights which are inconsistent with that law; secondly, because it assumes a construction of the Regulations, which is opposed to judicial decisions, and takes for granted statements and facts not supported by evidence; thirdly, because it does not fulfil the primary object for which it was originally sought, namely, the simplification of the procedure for the settlement and realization of rent; fourthly, because it is calculated to sow dispute and dissension between the landlord and the tenant and flood the land with litigation to the detriment of the peace and welfare of the agricultural community; fifthly, because it will tend to reduce a large proportion of cultivating raiyats into agricultural day-labourers; and sixthly, because, by abolishing the freedom of contract between the landlord and the tenant, and by making the Court and the Revenue-officer the referee and arbiter in all matters of zamíndárí management and raiyatí action, it will neutralize the vital principle of self-reliance in the agricultural population and destroy its backbone, hamper the free operation of economic laws, and stereotype the patriarchal phase of Government with the aggravating evil of litigation at almost every step. These objections, which I took when the Bill was introduced last year,

have not, I am sorry to say, been removed by the alterations made by the Select Committee.

In specifying my objections to the Bill I do not propose to discuss it chapter by chapter or to traverse all its details. I propose to confine myself to the leading principles of the Bill and a few principal details.

Tenure-holders.

IN addition to the present class of persons who are recognised as tenure-holders, two other classes have been introduced, namely, (1) occupancy-raiyats who may sub-let more than half their holdings (section 37), and (2) raiyats, the area of whose holdings may exceed 100 standard bighás, the whole or part of which is sub-let; in this case the tenant will be presumed to be a tenure-holder unless the contrary is shown (section 5, sub-section 5). In the case of the first-mentioned person, who is called a converted tenure-holder, all the incidents of the status of a tenure-holder will hold good except his liability to enhancement of rent. A tenant of the last-mentioned class will be entitled to all the rights and privileges of a tenure-holder. With regard to the first, I cannot understand with what justice is an occupancy-raiyat exempted from his obligations under the Bill as to pre-emption and distraint, and the zamíndár in so far placed in a worse position, because the occupancy-raiyat chooses to sub-let more than half his holding. The conversion of an occupancy-raiyat of a holding, the area of which exceeds 100 bighás, into a tenure-holder, is, in my opinion, still more arbitrary. The status of a tenure-holder carries certain privileges, which the occupancy-raiyat does not possess, and for which, generally, a valuable consideration is paid to the zamíndár. For instance, a tenure is not, unfrequently, a permanent holding, heritable and transferable according to conditions of contract, and, under the present Bill, will enjoy favoured rates of rent and will be exempt from the rules of pre-emption and distraint. Surely, it cannot be contended that the conversion of the hundred-bighá jotedar into a tenure-holder under an edict of the legislature is consistent with the ancient or existing land-law of the country. In so far, it is a direct encroachment upon the rights of the proprietary class.

Then as to enhancement of rent of tenure-holders, section 8 of Regulation V of 1812 contained the following rule as to the rate at which auction-purchasers might collect:—"In the case of a dependant taluqdár, if the rent of the lands be computed according to the rates payable by raiyats or cultivators for land of a similar quality and description, a deduction shall be allowed from the gross rent in the adjustment of the jama of such dependant taluq at the rate of 10 per cent., for the taluqdár's profit or income, over and above a reasonable allowance for charges of collection according to the extent of the taluq." This section was repealed by Act X of 1859, which, however, contains no rule as to the grounds or limits of enhancement of the rent of tenure-holders and under-tenure-holders. But under case-law the rent may be enhanced up to the limit of the prevailing rate payable by the holders of similar tenures in the neighbourhood, or where no such prevailing rate is easily ascertainable, up to such a limit as shall not exceed 10 per centum of the collections after deducting the expenses of collection (*vide Field's Digest*). This case-law has been embodied in the present Bill, but with wide variations. For instance "customary rate" has been substituted for "prevailing rate", though the former is less easily ascertainable than the latter. Under the case-law the margin left to the tenure-holder as profit was not to *exceed* 10 per cent. of the collections, but under the Bill it is to be *not less than* 10 per cent. of the balance which may remain after deducting, not from the collections, which I take to be actual collections, but from the gross rents, not only the expenses but also "risks of collection". I may observe, I am not aware of any revenue-law under which an allowance is made for "risks of collection". Even the zamíndárs are not allowed any percentage for sums irrecoverable from raiyats on account of the Public Works and Road Cesses, though the liability is not their own, and though they collect the money for Government without any remuneration. It will be thus seen in what advantageous position is the tenure-holder placed under the present Bill compared with his position under the existing law. But this is not all. Under

the existing law the rent of a tenure-holder is liable to be enhanced to any reasonable amount, but under the Bill the enhanced rent is not to be more than double the previous rent; under the existing law the enhanced rent is to be paid at once, but under the Bill the Court may direct that the enhancement shall be gradual and payable in five years; under the existing law there is no limit of period as to enhancement of rent, but under the Bill the period is limited to ten years. I allude to the last three provisions to show that while so little consideration has been shown to the zamíndár, who is the proprietor of the land, and who is responsible for Government revenue under the stern sun-set law, so much tenderness has been shown to the tenure-holder who is generally looked upon as an idle factor. Surely this is not the way to discourage sub-letting.

Raiyats at fixed rates.

FOR the first time a legal presumption was introduced by Act X of 1859 to the effect that if the rent of a raiyat had not been changed for a period of twenty years before the commencement of a suit, it shall be presumed that the land has been held at that rent from the date of the Permanent Settlement. Whatever the necessity of such a provision at the time of passing Act X of 1859, that necessity, it cannot be denied, no longer exists. The raiyats have advanced in intelligence and independence, and the practice of granting printed rent-receipts has become common in many parts of the country. They do not, therefore, now stand in need of the same measure of protection against enhancement which was considered necessary in 1859. On the contrary, the effect of this provision has been disastrous to the zamíndár. The Hon'ble Mr. Reynolds drew attention to this point in his memorandum on the Bill of the Rent Commission. He quoted several opinions showing that the law has thrown "an unfair burden of proof upon the zamíndár", and that "it bears very hardly upon auction-purchasers who are often unable to get possession of the zamíndárí papers of their predecessors". This, Mr. Reynolds observes, is forcibly represented by the Collector of Purniyá, who believes that "there is hardly an estate in the whole of Bengal in which the value of the proprietary right has not suffered from this presumption". Without entirely abolishing the presumption Mr. Reynolds recommended that its operation should be confined to cases in which uniform payment could be proved for twenty years before the period when the presumption was first introduced into the law. He proposed a further concession in favour of auction-purchasers by providing that the presumption shall not be pleaded against them. In making these recommendations Mr. Reynolds remarked, "In determining the principle upon which the Legislature should act it would seem that the main point to be considered is the practical effect of the presumption which was introduced into the Act of 1859". Has this presumption generally operated to defeat an unjust claim on the part of the landlord, or to maintain the tenant in a status to which he was not rightfully entitled? It is believed that to this question there can be only one answer. In the great majority of the cases in which the presumption has been successfully pleaded, it has had the effect of conferring upon tenants, whose holdings really originated subsequently to 1793, a privilege which was intended to be confined to those who had held from the date of the Permanent Settlement. If this is really the case, it does not seem inequitable that the rule should be modified in the manner which has now been suggested.

Mr. Reynolds, I am sorry to say, has since changed his opinion, but the validity and justice of his opinion remain all the same. Relying upon it, I moved the amendment of the law to the effect originally proposed by Mr. Reynolds, but neither my motion nor a very much modified proposal to allow the twenty years to count from before the date of the passing of the present Bill was accepted by the majority of the Committee. The Bill thus describes the incidents of holding at fixed rates;

Section 23.—A raiyat holding at a fixed rent or rate of rent—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as a tenure-holder, and

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of contract between him and his landlord, liable to be ejected.

Coupling this provision with the twenty years' presumption referred to I cannot resist the conviction that it will tempt raiyats, whether entitled to the presumption or not, to declare themselves to be raiyats at fixed rates, and thus defraud the zamíndár of his just rights, who, if he be strong enough to assert them, must go through an expensive and harassing process of litigation to do so.

The intention of the Legislature in introducing this law of presumption was to protect raiyats holding from the date of the Permanent Settlement from arbitrary enhancement of rent by unscrupulous zamíndárs, but the continuance of this provision will, I fear, have the effect of converting by a side-wind every occupancy-raiyat into a *mukarrarídár* or permanent tenure-holder. The consequence of this provision to good and bad zamíndárs is also striking. Where a zamíndár from a dislike of litigation, forbearance, or sympathy, has not enhanced the rent of a raiyat for more than twenty years, the raiyat, who has been careful enough to preserve his rent-receipts, will easily prove his case, while a zamíndár, who has shewn no such consideration or leniency, who has not scrupled to trouble and harass the raiyat with periodic enhancement, will necessarily have a decided advantage. The result will be that the good zamíndár will suffer and the bad zamíndár will gain.

Occupancy-raiyats.

THE occupancy-raiyat of the modern time is notoriously a creature of Act X of 1859, but I do not wish to revive the controversy on the subject. The twelve years' rule has been in existence for more than a quarter of a century, and it cannot be fair or just to disturb it now. The only fault found with the present law on the subject is that if a zamíndár were so disposed he could defeat the growth of the occupancy-right by shifting the raiyat from field to field. This practice, it is admitted, is not known in Bengal. But the Secretary of State, whilst strongly expressing himself in favour of the present twelve years' rule of continuous possession, has recommended the following modification. He would provide that "every resident raiyat shall have a right of occupancy in the land which he occupies and pays rent for, and that a resident-raiyat shall be one who, or whose ancestor, has occupied any land in the village or estate for twelve years." I do not at all subscribe to the equitableness of this provision. I do not think that it is fair or just that a squatter, because allowed to hold land in one part of an estate for twelve years, should, *ipso facto*, be entitled to hold land in all other parts of the estate as an occupancy or privileged raiyat. If in any part of the country the zamíndár has sought to nullify the growth of occupancy-right by shifting the raiyat from one plot of land to another, he has, it cannot be denied, acted within the law, and it would be as unreasonable to suppose that he has acted wrongly as to suppose that a tradesman is wrong in suing his debtor before the time, which would, under the law of limitation, bar his claim. As for preventing shifting, if it should be deemed absolutely necessary, I would have preferred to punish such an act by imposing a heavy penalty. But the Committee ruled, that the Right Hon'ble the Secretary of State for India having finally decided the question, they were not competent to re-open it, but I cannot help remarking that the Committee have gone further than the area covered by the Secretary of State's decision. The original Bill contained the following provisions regarding the acquisition of the status of a settled raiyat:—

Section 45.—Every person who, for a period of twelve years, whether before or after the commencement of this Act, has continuously held, as a raiyat, raiyatí land situate in any village or estate, shall, notwithstanding any contract to the contrary, and though the land so held by him at different times during that period may have been different, be deemed to become, on the expiration of that period, a settled raiyat of that village or estate.

Again:

Section 47.—Every settled raiyat of a village or estate holding after the second day of March, 1883, as a raiyat, any raiyatí land comprised in that village or estate shall, notwithstanding any contract to the contrary, be deemed to acquire or have acquired in that land a right of occupancy under the law for the time being in force.

At the instance of the Bengal Government the Committee have greatly extended the theory of the settled raiyat and created a new legal presumtion in his favour. Thus:

Section 25.—(1) Every settled raiyat of a village or estate shall have a right of occupancy in all land held by him as a raiyat in that village or estate;

(2) Every person who, being a settled raiyat of a village or estate, held land as a raiyat in that village or estate at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force.

Section 26.—(1) Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village or estate, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village or estate;

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

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

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

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

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

(7) If a raiyat recovers possession of land under section 96, he shall be deemed to have continued to be a settled raiyat, notwithstanding his having been out of possession for more than a year.

These provisions, I submit, are wholly outside the decision of the Secretary of State. That authority would in no case reduce the period of occupation from twelve years as provided in section 25, sub-section (2), nor did he recommend any legal presumption that every raiyat shall be considered a settled raiyat with right of occupancy unless proved to the contrary. The Secretary of State, it would be observed, would recognise a "resident raiyat" as an occupancy-raiyat, but the provisions quoted above do not recognise *residence* as a condition of accrual of occupancy-right. In the second place, the Secretary of State does not refer to possession by two or more co-sharers as a proof of occupancy-right derived by each such co-sharer. In the third place, he does not say that, even if a settled raiyat leaves his holding and pays no rent, he shall be considered a settled raiyat "for one year thereafter". On the contrary, he declares payment of rent as an inalienable condition of the right. And lastly, the Secretary of State no where says that if a raiyat once abandons a holding and afterwards recovers possession by payment of compensation, he shall be deemed to have continued to be a settled raiyat notwithstanding his being out of possession for more than a year. All these proposals, I repeat, are outside the sanction of the Secretary of State, and, as a matter of course, are so many encroachments upon the proprietary rights of the zamíndár.

It is observable that while a person holding land as a raiyat shall not be prevented from acquiring an occupancy-right in the land by reason that he is jointly interested in the land as proprietor or tenure-holder, and a person, though an *ijárdár* or farmer, shall not lose his right of occupancy in any land which he may subsequently hold in farm, it is declared that if the landlord acquires an occupancy-holding, the occupancy-right shall cease to exist (section 28). On what principle is this right denied to the landlord and conceded to the tenure-holder, who may be a permanent holder, and to the farmer, is not clear to me. It does seem strange and incomprehensible that the zamíndár alone shall not be allowed to enjoy the ordinary rights of a purchaser, simply because he happens to be a zamíndár.

On this point I venture to draw attention to the following remarks of Mr. H. L. Dampier, Senior Member of the Board of Revenue, deservedly regarded as a high fiscal authority in Bengal. He says: "It will be open to the whole world, with one exception only, to acquire by purchase or otherwise and to continue to hold certain rights described as occupancy-rights in a given piece of land. Such rights may be acquired and held by distant non-agricultural capitalists; by the zamíndárs of estates adjoining that within which the land lies; by the zamíndárs, resident or absentee, of the estate itself, if the land is included in a tenure; by any non-resident-holders of tenures, whether in the estate itself or in any other estate; by the very holders of tenures above the lowest under-tenure which includes the land. The one person who is debarred from holding this right, even if he acquires it by purchase from the person in whom it last vested, is 'the landlord', that is, by the definition the 'person or number of persons immediately under whom a tenant holds'; or, according to the proposal made by the Lieutenant-Governor towards the end of paragraph 14, the 'proprietor or permanent tenure-holder immediately under whom the raiyat holds'". The justice of these remarks is so evident that I need say nothing by way of comment.

Transfer of occupancy-holding and pre-emption.

THE question of transferability of the occupancy-holding has been discussed threadbare. I will not therefore repeat the arguments against it, which are already so well known. Suffice it to say that the measure will be equally injurious both to the zamíndárs and the raiyats; the former will have a valuable right unjustly taken away from them and be exposed to the intrusion of hostile persons into their estates, and the latter, under their peculiar circumstances, will, at no distant time, be reduced to the status of day-labourers by being sold out of their holdings, on which they depend for their subsistence. Neither under the Permanent Settlement Regulations nor under Act X of 1859 is an occupancy-holding transferable. When the question of the transferability of the occupancy-holding was first proposed by the Government of Bengal, the Government of India expressed its disapproval of it. The British Indian Association was invited to express its opinion on the subject, and it agreed to the legalization of the sale of the occupancy-holding in satisfaction of decree for rent, and suggested that, where a zamíndár might adopt this remedy, an occupancy-holding once so sold should be declared to have become a transferable tenure. The Lieutenant-Governor of the day practically adopted the suggestion. In a letter to the Government of India, dated the 2nd February, 1878, Mr. Secretary Reynolds wrote:

"The Lieutenant-Governor has with some reluctance withdrawn the proposal that the occupancy-right shall be generally transferable by private sale or other agreement. The weight of opinion is in favour of this proposal, as will be seen by a reference to the letter of the Board of Revenue, and His Honour is satisfied that such transfers would not have the bad effect which has been sometimes apprehended, and that they would not tend to transfer the land to classes whose ownership it might not be thought desirable to encourage. He believes that such a right of transfer would be much to the benefit of landholder and raiyat. It appears, however, that the landlord class are strongly opposed to the concession of any general right of transfer, and the Governor General in Council has expressed serious doubts as to the expediency of including such a

provision in the Bill. The Bill, therefore, only proposes to recognize sales of occupancy-tenures at the request of the landlord in execution of decrees of Court, and to this the Lieutenant-Governor believes that no objection will be made."

The Bengal Government has since changed its opinion on the subject, and the concession made by the zamíndárs in 1878 necessarily goes for nothing. In the present Bill the transferability of the occupancy-holding is made general and absolute, subject to a rule of pre-emption. There is nothing in the Bill to prevent greedy land-jobbers or speculators from trafficking in land at the expense of the zamíndárs. As to right of pre-emption accorded to the zamíndár it will, I am afraid, prove in practice more a shadow than a substance. In the first place, the zamíndár will have to pay a consideration for land of which he is the proprietor, and which was never before transferable under the law. He will then have to run a competition with other bidders for the purchase of the land, and, if he cannot come to an agreement with the raiyat about the price, he must go through the expensive process of a reference to the Court for arbitrement, and must be prepared to pay the price adjudged by the Court. If the raiyats of a zamíndár in any considerable number become recusant and threaten him with the sale of their holdings, it will be difficult for him to keep out hostile people from the holdings unless he has a long purse to buy them up. Practically, therefore, this recognition of the transferability of the occupancy-holding may be worked by evil-disposed raiyats to the utter ruin of the zamíndár. It is noteworthy that while the zamíndár will have to go through the expensive process of obtaining the Court's decision as to price, the raiyat shall not be bound by that decision, for section 32, sub-section 4, says that when the zamíndár tenders a price to the raiyat, "the raiyat shall either abstain from selling the land or sell it to the landlord at that price". So the landlord will be entirely at the mercy of the raiyat.

Shadowy as the right of pre-emption will practically be, the amended Bill contrives to keep out of the purview of this provision all substantial raiyats, for under it the rule of pre-emption will not apply to tenure-holders, and all occupancy-raiyats who may sub-let more than half their holdings, or who may keep holdings of more than hundred bighás in size part of which is sub-let, are, *ipso facto*, coverted into tenure-holders.

Enhancement of rent.

I HAVE already alluded to the question of the enhancement of the rent of tenure-holders, who are placed at a considerable advantage to the detriment of the zamíndár, a position which they had never before enjoyed under the Permanent Settlement Regulations or under Act X of 1859. With regard to the enhancement of the rent of occupancy-raiyats I wish to point out that at present the enhancement law has come to a dead-lock, and that one of the chief objects of fresh legislation is admitted to be to afford relief to the zamíndárs in this matter; but I am of opinion that the alterations made by the Committee will tend more to maintain the *status quo* than to secure justice to the landlord. In the first place under the existing law there is a perfect freedom of contract between the landlord and the tenant regarding enhancement of rent outside the Court, but under the Bill this freedom is entirely taken away, and it is provided that where the arrangement may be voluntary, the enhancement shall not exceed more than four annas in the rupee, that is to say, not more than two annas for a term of at least seven years, and if more than two annas, but not more than four annas in the rupee, for a term of at least fifteen years. Thus a serious disability is imposed upon the landlord in fixing rent outside the Court. When enhancement of rent is sought by suit, the grounds on which the enhancement may be applied for are thus set forth:

(*a*) That the rate of rent paid by the raiyat is below the prevailing rate payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity.

(*b*) That there has been a rise in the average prices of staple food crops in the locality or at the usual markets.

(*c*) That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(*d*) That the productive powers of the land held by the raiyat have been increased by fluvial action.

I am not prepared to say that the revised grounds will materially help the solution of the problem of enhancement. The first ground, "prevailing rate" is not made clear, and the same doubts and uncertainties that now hang round it remain unremoved. An attempt was made to explain it, but it was opposed by the Bengal Government. The second ground will, I am afraid, prove fictitious, for knowing as the Committee do, how unreliable are the price-lists prepared by Government officers, they cannot deny that it will be difficult to obtain reliable data for striking average prices, particularly, "in the locality or at the usual markets"—who is to fix the usual markets? The third ground will be made practically inoperative by the conditions which follow. As for the fourth ground, even if it be fairly worked, its application will be exceptional.

The rules providing for enhancement enquiries by the Revenue-officer will practically leave the whole matter to the discretion of the Revenue-officer. For instance, in ascertaining the prevailing rate, the Revenue-officer is directed to make a local enquiry, but he is not told on what principle he is to find the prevailing rate, and the result will be diversity of practice under diverse officers. In working out enhancement on the ground of rise in prices it is provided that—

(*a*) The Court shall have regard to the lists of prices periodically published under the authority of the Local Government, and shall compare the average prices during the quinquennial period immediately preceding the institution of the suit with the average prices during such other quinquennial period as it may appear equitable and practicable to take for comparison.

(*b*) The Court shall not enhance the rent so that the enhanced rent exceeds the previous rent by more than four annas in the rupee.

(*c*) Subject as aforesaid, and subject also to section 48, the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last quinquennial period bear to the average prices during the previous quinquennial period taken for purposes of comparison.

In carrying out the above provisions much will depend upon the price-lists, and, as I have already stated, those that are published in the *Calcutta Gazette* by Government are wholly unreliable. They are collected by the police, who cannot be expected to be over-scrutinous. They are not tested by any responsible agency, not to say that the wholesale and retail prices being generally mixed up, no fair average can be based upon them. Unless special care be taken to prepare the lists—and this remark applies to future lists—they cannot and ought not to be accepted by courts of justice as good and valid evidence. The question still recurs—how will the lists of past prices be prepared?

It will be observed that the value of all crops must be reduced to the price of paddy in Bengal, and that of Indian corn, barley and wheat in Bihár. The specification of the staple food-crops is left to the discretion of the Local Government, which may from time to time vary them. No allowance is made for valuable crops, such as tobacco, sugarcane, mulberry, potato, jute, &c. This rule is evidently founded on the principle of the Tithes Commutation Act of the United Kingdom. There is, however, I venture to submit, no fair analogy between tithes in England and rents in Bengal; for the former represented a fixed share or a tenth part of the crop, while the latter, though originally based on a share of the produce, have now greatly receded from the old standard. An English tithe is not susceptible of enhancement, whereas the Bengal money-rent is legally declared to be liable to enhancement. The question, therefore, arises whether the principle, which is held equitable in the commutation of tithes, would be fair and equitable in the enhancement of a money-rent? As far as I can judge, the difficulties in carrying out the principle will by no means be less than what they are under the existing law. As for enhancement on the ground of landlord's improvement, it is so much handicapped by restrictive conditions, that it will, I fear, prove an economic anomaly. After enumerating the circumstances which the Court should take into consideration in ordering enhancement on this ground, section 46 says that the Court shall

consider the ability of the land to bear a higher rent. With such an uncertainty hanging over him, will any proprietor with two grains of common sense to rub against one another undertake any improvement?—if he cannot be sure of any return for his money, naturally, he wont lay out money. There are two other points connected with this subject. It was settled in previous correspondence between the Government of Bengal and the British Indian Association that enhancement of rent in any case should not be more than double the present rent, and that every enhancement of rent shall have a currency of ten years. These rules were embodied in the original draft Bill, but, at the instance of the present Bengal Government, both the rules have been altered. It is now declared that, when enhancement is sought on the ground of prevailing rate, the rent shall not exceed the previous rent by more than eight annas in the rupee or fifty per cent., and that, when it is sought on the ground of rise in prices, the enhanced rent shall not exceed the previous rentby more than four annas in the rupee or twenty-five per cent., and that every enhancement shall have a currency of fifteen years. It would be thus seen that there is no finality in the decision of Government, and that the more is conceded by the zamíndárs the more is demanded from them.

It is observable that where the enhancement is sought on the ground of the present rent being below the "prevailling rate", common sense suggests that the rent should be raised to the limit of the "prevailing rate"—it is not clear why a maximum limit of fifty per cent. should be fixed in such a case. Again, where the enhancement is sought on the ground of rise in prices, and the increase is to be given according to the rule of proportion, it is not equitable that there should be again a maximum limit of twenty-five per cent.

Commutation of produce-rents into money-payments.

THIS part of the Bill affects Bihár more than Bengal, and as my honourable collegaue, His Highness the Maháráját of Darbhangá, will doubtless comment upon it, I need not say much upon it. I may, however, observe that the principle upon which the commutation is directed to be made, namely, (*a*) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity, and (*b*) the average value of the rent actually received by the landlord during the preceding ten years, will tend to lower the present rents. I should add, that when the Bill was introduced, a distinct assurance was given that the present rents will not be lowered.

Non-occupancy-raiyats.

BOTH under the Permanent Settlement Regulations and Act X of 1859 it was left entirely to the discretion of the landlord to deal with the non-occupancy-raiyat, who is none other than the tenant-at-will. But the relations between the landlord and non-occupancy-raiyat are materially altered by this Bill. Nothing will prevent the non-occupancy-raiyat from acquiring the occupancy-right, and, as already observed, he will get the benefit of the legal presumption of a settled raiyat, if he can manage to scatter a few seeds once upon a plot of ground; then when he will be first let in he will be liable to pay such rent as may be agreed on between himself and his landlord, but no enhancement will be allowed except by registered agreement, and even when an agreement may be tendered by the landlord to the raiyat, the latter may refuse it, and the former will then be driven to the necessity of instituting a suit to eject him. The Court shall then determine what rent is fair and equitable for the holding, and if the raiyat agrees to pay the rent so determined, the landlord, under order of Court, shall be bound to give him a lease for five years, and if before the termination of the lease the raiyat shall have acquired a right of occupancy, he will be entitled to all the rights and privileges of an occupancy-raiyat. The non-occupancy-raiyat will thus be one in name; the landlords present right to deal with him at his discretion is entirely taken away, while the freedom of contract is disallowed and the landlord is compelled to give a judicial lease for five years. I should observe that in consequence of the introduction of the judicial lease,

the original provisions regarding compensation for disturbance have been omitted. These provisions embodied a new-fangled idea not known in this country, and would, if retained, have proved a new apple of discord. But the substitution of the judicial lease for five years involves a great injustice to the landlord, who is tied hand and foot by the Court in a matter in which he has always enjoyed perfect independence of action. The raiyat, in whose favour the judicial lease is ordered, may be most obstreperous and tribulent, may by his bad advice be tainting the whole flock around him, and may thus prove most mischievous, not to say that the landlord, if he settles the land with another raiyat, may get better rent and perhaps better security for payment of rent. But the judicial lease will give him no such option or advantage. I cannot help thinking that the provisions relating to non-occupancy-raiyats involved a further invasion of the proprietary rights of the landlord, and that in favor of a class of tenants who are not attached to the soil, and have, therefore, no manner of moral claim upon the consideration of the landlord.

Sub-letting and sub-raiyats.

ONE principal defect of the Bill, as introduced, was that, while it seriously curtailed the rights and privileges of the zamíndár, it did practically little for the good of the *boná-fide* cultivator, whose labour constituted the wealth of the country and fed a whole host of proprietors and sub-proprietors including the Government, as the representative of the public. The position of the middleman had been greatly strengthened, while the sub-raiyats, usually the actual cultivators of the soil, were left to the tender mercies of the middlemen. The invidiousness of this condition was fully realized by the Committee, and they proposed various devices for bettering the position of the sub-raiyats. Accordingly, restrictions have been proposed in the Bill on sub-letting, but I doubt whether these provisions will work. In the first place, if an occupancy-raiyat sub-lets more than half his holding, he shall on registration of the same be converted into a tenure-holder. Considering the decidedly advantageous position of the tenure-holder, this will operate as a premium on sub-letting instead of as a repressive measure. In the second place, if an occupancy-raiyat sub-lets, his sub-lease shall not be valid for a term exceeding seven years, and this provision will have a retrospective effect. Surely this will be no loss to the sub-lessor, for the shorter the lease, the greater his gain. In the third place, the landlord of a sub-raiyat shall not, in the case of a registered lease, be entitled to recover rent more than fifty per cent. of what he himself pays, and in any other case not more than twenty-five per cent. I do not understand how this rule will work, where there is a long chain of middlemen, for instance in Backergunge, where there are thirteen grades of middlemen. Will each middleman have the right to claim from his sub-raiyat fifty per cent. in excess of what he pays to his own landlord? What would then be the position of the last link in the chain —of the men who immediately cultivates? And in the fourth place, a sub-raiyat shall not be liable to be ejected by the landlord except at the end of an agricultural year and after a written notice to quit, to be served not less than six months before the expiration of that year. My own impression is that there will be frequent disputes between the superior raiyat and the sub-raiyat as to whether the former has sub-let more than half his holding, and the result will be either silent suffering on the part of the sub-raiyat or frequent litigation. Then, as far as I can judge, the limitation of rent under section 62 will apply only in such cases in which a superior raiyat may sub-let more than half his holding; he will, therefore, studiously keep himself under this limit and thus avoid the clutches of the law. Furthermore, it will be nobody's interest to bring to Court the superior raiyat contravening the law, for no penalty attaches to breach of law. The superior raiyat will make it a point not to let his land to any raiyat who will not accept his own terms, and when a sub-raiyat accepts those terms, he will not seek the benefit of the law; another raiyat, a third party, may wish to get the land on the terms prescribed by law, but he will have no *locus standi*, if he be not admitted by the superior raiyat. So that the new provisions restricting sub-letting will either prove a dead-letter or give rise to endless litigation.

Improvements.

THE chapter on improvements introduces an alteration in the relations between the landlord and tenant consistent with neither the existing law nor custom. At present improvements are generally made by the landlords, and where they are made by tenants, they are effected with the consent and sanction of the landlord, but this chapter declares that (1) where a raiyat holds at a fixed rent his landlord shall not be entitled to prevent him from making any improvement in respect of his holding, (2) where a raiyat has an occupancy-right he shall have the prior right to make the improvement unless it affects another holding or other holdings under the same landlord, and (3) where a non-occupancy-raiyat desires that a certain improvement should be made in his holding, he shall serve a notice on the landlord calling upon him to make the improvement within a reasonable time, and if the landlord is unable or neglects to comply with his request, he may make the improvement himself. The whole theory of these provisions ignore the proprietary right of the landlord, and assigns to the Collector the task of deciding as to who has the right to make improvements. If public policy requires that the raiyat should be encouraged to make improvements, surely the first option ought to be given to the landlord to effect them. From an economic point of view, the landlord, having larger capital, is in a better position to carry out improvements, but no facilities are offered to him for this purpose. Even a return in the shape of increased rent is not assured to him for his outlay of capital on improvements, for it will be in the discretion of the Court not to allow an enhancement, if the court thinks that the land cannot bear enhanced rent. The inevitable result of these rules, I am afraid, will be to throw back all improvements. The soundness of the policy, which expects improvements from those who have not the means to make them, and to deter those who can, is unintelligible to me. I suggested that facilities should be given to the landlord to acquire land for purposes of agricultural experiments, model-farms, &c., but my proposals were not accepted. I was referred to an amendment of the Land Acquisition Act.

Management of joint estates.

THE Bill gives power to the District Judge, on the application of the Collector or of any person interested, even a squatter, to deprive co-owners of an estate or tenure of the right of management thereof, if it appears to him that there has ensued or is likely to ensue (*a*) inconvenience to the public, or (*b*) injury to private rights. I shall take the last point first. I at once admit that hardships and harassment may be caused to raiyats in consequence of disputes among co-owners and the absence of a common manager, but this point has been met by the Committee in the provisions made for deposit of rent. Section 73, clause (*c*), says that a tenant may deposit rent when the rent is payable to sharers jointly, and the tenant is unable to obtain the joint receipt of these co-sharers for the money, when no person has been empowered to receive rent in their behalf. Besides, the co-sharers cannot apply for distraint or sue for enhanced rent unless they make the application or institute the suit jointly or through a common manager. It will be thus seen that the Bill effectually removes all reasonable complaints of raiyats who are tenants of joint estates. As for inconvenience to the public from the joint management of estates, I confess, I do not clearly understand it. If, for instance, the co-parceners default in the payment of revenue, their estates are liable to sale; if they transgress law or fail to comply with public requisitions, their responsibility is easily traceable under the operation of the Bengal Registration Act, and they are liable to punishment. It is not therefore clear why they should be deprived of the management of their own property because the Collector or Judge thinks that it causes "inconvenience to the public". I submit it would be contrary to sound public policy to remove all incentives to exertion and improvement from landed proprietors and capitalists by delegating the management of their property to others on pleas which have no existence in fact.

Record-of-rights, settlement of rents, tables of rates and record of proprietor's private lands.

THE chapters relating to these subjects are doubtless in accordance with the modern ideas of land administration in periodically settled India, but as far

as Bengal is concerned, the rights and interest of different parties are generally well defined, and where there might be disputes between landlords and tenants in matters dealt with in these chapters, common sense would suggest that the application of the law should be left to the self-interest of the parties concerned. But the essence of these chapters is that while liberty is accorded to both landlord and tenant to move the machinery provided in them, the Local Government is empowered to bring of its own motion the machinery into action. The application of the provisions contained in these chapters will, I fear, plunge the country into a flood of litigation, stir up the worst passions of both the landlord and the tenant, open a wide door to perjury and forgery, give rise to endless corruption among the subordinate *amlah*, and throw the agricultural population into a sea of trouble, expense and loss. This was the lesson taught by the Revenue Survey. Of course, when the parties will themselves apply for the enforcement of the provisions under notice, it will be their own lookout, but I do not see any good or valid reason why the Government should, without any application from the parties, step in and inflict upon the country the evils pointed out above. The work contemplated cannot, I fear, be accomplished in two or three generations to come, and for all this time will run the festering sore indicated above. If the record-of-rights were confined to those cases in which auction-purchasers at revenue or summary sales may not receive *jamabandí* papers for their guidance, if the settlement of rents were made applicable to those cases in which the raiyats might combine and withhold payment of rent and agrarian outrages might take place, and if the record of proprietor's private lands were limited to those cases in which the proprietor himself made the application, in all these cases, on the application of parties, it would be reasonable and fair; but to give the wide scope which has been given in these chapters by vesting the Government with unlimited discretion is not only not warranted by the necessities of the case, but will be followed by evils which will be highly detrimental to the best interests, peace and happiness of the agricultural population. As regards tables of rates, the enquiries which have been made on the subject have made it clear that in most parts of the country they are not practicable, that there are so many variations in rates of rent, sometimes one hundred and odd in a village, owing to various causes, historical, personal, economical and social, that it is hopeless to discover any typical or uniform rate, or what was formerly called *Parganá* rate in any given area. And yet power is taken by the Local Government to order preparation of tables of rates for special areas and to charge landlords and tenants with the cost of this work, though they may not in the least benefit by it. In the same way the expenses which may be incurred by enforcing the provisions relating to record-of-rights and settlement of rents, will be cast upon the landlords and tenants, though no application had been made by them. Thus a new cess will be imposed upon the land for purposes of proceedings which may do more harm than good to the landed classes.

As regards the record of proprietor's private lands which go by the name of *khámár*, the definition given is wholly opposed to what is contained in the Permanent Settlement Regulations and excludes all waste lands. Section 138 declares:

Section 138.—(1) The Revenue-officer shall record as a proprietor's private land—

(*a*) land which is proved to have been cultivated as khámár, zeraat, sír, nij, nij-jot, or kamut by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village custom as proprietor's khámár, zeraat, sír, nij, nij-jot, or kamut.

(2) In determining whether any other land ought to be recorded as a proprietor's private land the officer shall have regard to local custom and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land, but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

Section 37 of Regulation VIII of 1793 thus describes *khámár* lands:—

Section 37, Regulation VIII of 1793. The above exception [exclusion of lakhiraj lands from the general assessment], however, is not meant to include the *Malikanah* lands in Bihár, or the *nankar, khámár, nij-jot*, and other private lands of the zamíndárs and independent talukdárs, or other actual proprietors of land in Bengal and Mednípur, &c.

It will be seen by comparing the language of the Regulation with that of the Bill that no such condition as cultivation for twelve continuous years was attached to the zamíndár's *khámár* lands under the old law. As for waste lands, it is notorious that they were given to the zamíndár to enable him to recoup the loss which inevitably fell upon him under the crushing assessment of the Permanent Settlement.

Distraint.

THE law of distraint is generally regarded as an important and potential auxiliary in realising rent. In Bihár, I understand, it is largely resorted to. The essence of the present law of distraint is, that the process is a sharp and quick remedy, and that the whole responsibility rests upon the landlord who is liable to heavy penalties in case of abuse of power. Under the Bill distraint is made a process of Court; it is clogged with various restrictions, and by the time the order may be executed the crops may be off the field. The procedure is so much elaborated that it will no longer prove the prompt remedy, which the distraint law ought to be, while the expense and harassment will be such as to compel the landlord to forego it altogether. I am inclined to think that the law of distraint, as provided in the Bill, will remain a dead-letter, and thus the only facility which the landlord possesses at present for realising his rent, quickly, will be taken away from him.

Judicial Procedure.

I NEED not repeat that the Government has over and over promised to simplify the procedure for recovery of rent. It has recognised its obligation in this respect from the time of the Permanent Settlement to this day. One of the primary objects of the present Bill from its first inception has avowedly been the simplification of the procedure for the realisation of rent, and the Committee in deliberating upon the subject fully admitted it, but the practical result of their deliberations, I am constrained to say, is disappointing. I submitted three schemes on the subject: (1) the Patní Procedure, (2) the Certificate Procedure now applicable to Government and Wards Estates, and (3) a modification of the present procedure. I set out below the details of the third scheme.

The zamíndár or rent-receiver in instituting a suit for arrear of rent should make out a *primá facie* case by filing necessary papers such as *jama-wásil-bákí* papers and counterfoils of receipts and giving necessary evidence.

The Court should then issue summons. In order to obviate the usual complaint of non-service of summons, I would suggest a provision to the following effect:—

"The summons shall be ordinarily served personally or by a registered postal cover. If for any reason the summons cannot be served personally on the defendant, it shall be affixed at his usual place of residence in the village in which the land is situate, or within five miles thereof. The notice may be served by affixing it at the mál-kacharí of such land, or on the land for which the arrear is due or other conspicuous place thereon, or at the village chauki or chowpal, or at some other conspicuous place in the village in which the land is situate. An attestation of service should be taken from the village chaukídár, village mandal, or some two respectable residents of the village, or rural sub-registrar, as the case may be."

The order to prevent abuse, at least two of the abovementioned processes should be observed in every case; and with this safeguard the plea of non-service of summons should not be accepted by the Court as a good ground for re-opening or retrying a case which has been decided *ex parte*.

The summons should contain a notice that unless the defendant appears within one week from date of service, the Court shall pass a decree for the amount claimed and order immediate execution. The Court should be required to examine the defendant within eight days from the date he enters appearance and give notice of the day appointed to the plaintiff. The defendant should be required to file all documentary proofs and bring his witnesses in support of his pleas on the day of his examination. If the nature of the case admits of the immediate disposal of the suit, the Court should do so; or if the case be contested, it should on that day settle the issues in the presence of both parties and fix another day for hearing and final determination of the suit, not exceeding a fortnight from the date of examination of the defendant.

As regards execution, if the defaulter be a tenure-holder or occupancy-raiyat, his tenure or holding should be sold in execution. If he be a non-occupancy-raiyat, he should be evicted.

No appeal should be admitted unless the amount decreed was deposited. The rent-receiver should be allowed to take out the deposit on giving proper security.

This scheme seemed to enlist the sympathy of many of my honourable colleagues in the Committee, but, to my misfortune, the majority have not been able to accept it. They say—

> For ourselves we must confess that after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent-suits, we are unable to suggest anything of importance in this direction which would not involve a serious risk of failure of justice. In particular, while we are anxious to facilitate the service of summons and the proof of such service, we are unwilling to give any presumption of law against an absent defendant except on adequate proof of such service.

The Committee have, however, introduced the following new provisions :—

> We have, however, with a view to avoiding, as far as possible, the complication and delay which arise from questions as to the landlord's title being raised in rent-suits, made an important amendment in the section (164) which requires a tenant admitting that rent is due from him, but pleading that it is due not to the plaintiff but to a third person, to pay the amount into Court. Our object is to force the issue of disputed title to be raised separately and independently of the rent-suit, and we have therefore provided that the Court shall, on the money being paid in, cause notice of the payment to be served on the third person, and unless he, within three months, institutes a separate suit against the plaintiff and obtains an order restraining the payment of the money, it will be paid out to the plaintiff on his application.

A much more efficacious remedy, in my humble opinion, would have been, as I pointed out in Committee, to declare forfeiture of right of the raiyat in case his disclaimer of the title of his landlord was disproved in Court. The modifications proposed by the Committee would only multiply wheel within wheel, a title-suit in an arrear-suit, and thus vastly delay the realization of rent instead of facilitating it.

The Committee propose to give power to the High Court to make modifications in the ordinary procedure, if necessary, in applying it to the trial of rent-suits. This, to my mind, is tantamount to shirking the question. Surely the legislature, which has enacted the code of procedure, is competent to modify it for the purpose of expediting the trial of rent-suits.

I do hope that when the Committee meet in November next, they will be able to see their way to an efficacious simplification of the present procedure for the realisation of rent, which is a crying grievance with the landlords, and in consequence of which they are not unfrequently heavy losers in meeting the Government demand of the revenue and the cesses. If there is a consensus of opinion on any one point connected with the rent-law, it is on this, and it would be a scandal if, while the whole law is being overhauled, no substantial aid be given to the landlords to realize their just dues.

Freedom of contract.

UNDER this Bill, freedom of contract between the landlord and the tenant is practically abolished. The matters which are placed beyond the reach of contract are thus specified by the Committee :—

(*a*) The acquisition of the status of settled raiyat and of the occupancy-right (sections 24, 25 and 26).

(*b*) The incidents of the occupancy-right specified in section 31.
(*c*) The occupancy-raiyat's right to demand a reduction of rent under section 51.
(*d*) The right of either landlord or tenant to demand a commutation of a produce-rent under section 53.
(*e*) The protection afforded by the Bill to a non-occupancy-raiyat or an under-raiyat from ejectment except on specified grounds (sections 58, 59, 60 and 63).
(*f*) The right of a tenant to a reduction of rent on account of a diminution of the area of his holding section 66).
(*g*) The right of a raiyat to make improvements and claim compensation for them (sections 88, 89, 90 and 93).
(*h*) The protection afforded to all tenants against ejectment except in execution of a decree (section 98).

I have, in my remarks on the introduction of the Bill, strongly protested against this retrograde move. The Permanent Settlement Regulations not only recognized but openly encouraged freedom of contract, and Act X of 1859 did the same. I cannot conceive that if the raiyat can be fairly considered a free agent in mortgaging or selling his hearth and home or his agricultural land, in disposing of the produce of his field, or engaging his labour and fulfilling a thousand other obligations of every-day life, why he should be considered incompetent to enter into contract with his landlord. I would strongly urge the re-consideration of this question.

Civil Courts and Revenue-officers.

THE jurisdiction under the Bill is divided between the Civil Court and the Revenue-officer. The large powers which have been conferred upon the Revenue-officer at the instance of the Bengal Government are, I hope I am mistaken, evidently intended to reduce the land administration of Bengal to the same dead-level system which prevails in Northern India, and which has so notoriously hampered the action of capital and clogged the springs of industry in that part of the country. Whether I refer to the provisions for the commutation of produce-rents into money-payment, to record-of-rights and settlement of rents, to preparation of tables of rates, to superintendence of contracts between the landlord and the tenant, the fixing of standard poles for measurement, the preparation of price-lists, or the like, the Revenue-officer has been made the fulcrum on which no small portion of the structure of the Bill rests. I would not object if the Revenue-officer were made only an executive or administrative officer, but as he has been vested with judicial functions, the objection becomes serious. Nothing, I conceive, can be more injurious to the interests of justice than a system which will place a judicial officer at the beck and nod of the Executive Government. On this point, I would reproduce the enlightened and wise remarks of Lord Cornwallis contained in the preamble to Regulation. II of 1793 :

> All questions between the Government and the landholders respecting the assessment and collection of the public revenue, and disputed claims between the latter and their raiyats (tenants), have hitherto been cognisable in the Courts of Maal-Adawlut, or Revenue Courts. The collectors of revenue preside in these Courts as judges, and an appeal lies from their decision to the Board of Revenue, and from the decrees of that Board to the Governor General in Council in the Department of Revenue. The proprietors can never consider the privileges which have been conferred upon them as secure, whilst the Revenue-officers are vested with these judicial powers. Exclusive of the objections arising to these Courts from their irregular, summary, and often *ex parte* proceedings, and from the collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties, it is obvious that, if the regulations for assessing and collecting the public revenue are infringed, the Revenue-officers themselves must be the aggressors, and that individuals who have been wronged by them in one capacity can never hope to obtain redress from them in another. Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants. Other security must be given to landed property and to the rights attached to it, before the desired improvements in agriculture can be expected to be effected. Government must divest itself of the power of infringing, in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders. The Revenue-officers must be deprived of their judicial powers. All financial claims of the public, when disputed under the Regulations must be subjected to the cognisance of Courts of Judicature, superintended by judges who, from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants. The collectors of the revenue must not only be divested of the

powers deciding upon their own acts, but rendered amenable for them to the Courts of Judicature, and collect the public dues, subject to a personal prosecution for every exaction exceeding the amount which they are authorised to demand on behalf of the public, and for every deviation from the regulations prescribed for the collection of it. No power will then exist in the country by which the rights vested in the landlords by the Regulations can be infringed, or the value of landed property affected. Land must, in consequence, become the most desirable of all property, and the industry of the people will be directed to those improvements in agriculture, which are as essential to their own welfare as to the prosperity of the State.

The broad views, which were expressed by the Government in 1793 apply with ten-fold force in 1884.

Patní tenures.

THE zamíndárs, not without reason, object to the incorporation of the Patní law in this Bill. They hold that every word of that law has during the last 65 years received an accepted and authoritative meaning; that it is well understood by the zamíndárs, the patnídár, the Court and the amlah; that to modernise the language will be to disturb the recollections and traditions of more than three scores of years, and that it is therefore highly desirable to leave the Patní law as it is, text and construction, on the principle of letting well alone. I concur in this opinion and would leave out the Patní chapter from this Bill.

I have hastily drawn up my principal objections to the leading principles of the Bill. I have not had time to comment on details. I propose to bring them forward when the Committee meet in November next.

KRISTODÁS PÁL.

The 14th March, 1884.

Memorandum of dissent from the finding of the majority of the Select Committee on certain provisions of the proposed Tenancy Bill.

1. Chapter IV of the revised Bill provides that a raiyat holding his land at a fixed rate of rent shall be—

(*a*) subject to the same provisions with respect to transfer, succession, &c., as a tenure-holder; and

(*b*) liable to be ejected from his holding on the ground of his having broken the terms of a written contract between him and his landlord on breach of which he is liable to be ejected.

The occupancy-raiyat claiming to hold his land at a fixed rate of rent is, in respect of his holding, placed in a more advantageous position than the ordinary occupancy-raiyat—

(*a*) by the landlord being debarred from pre-empting should the raiyat transfer his holding to a third party;

(*b*) in not being liable to be ejected should he use his land in such a way as to render it unfit for the purposes of his tenancy.

The majority of the Committee are of opinion that the incidents attached to an occupancy-holding the rent of which is fixed should be different from the incidents attached to an ordinary occupancy-holding; from this I dissent.

If the landlord is to be allowed the right to pre-empt in the one case, he should be allowed to do so in the other; if the raiyat is to be subject to eviction for rendering his land unfit for the purposes of the tenancy in the one case, he should be liable to be evicted in the other.

Every argument that can be adduced in favour of its being permitted in the one case would apply equally in the other.

Pre-emption is, I believe, an off-shoot of Muhammadan law; when the right to pre-empt is claimed among Hindús in Bihár, it is governed by custom.

The right to pre-empt under English law is, I believe, embodied in the provisions of this Bill for the first time, and only with the object of affording the landlord the means of protecting himself against persons who might purchase occupancy-rights with the intention of injuring him.

The landlord will be put to as great inconvenience by a hostile purchaser in the one case as he will be in the other; the same with a farm destroyed. It will be as useless to him in the one case as it will be in the other.

The effect of these provisions, coupled with Chapter VIII, will be ruinous to the landlord.

Every time a landlord elects to exercise his right to pre-empt, a title to hold at fixed rates will be set up.

Every time a raiyat transfers his holding as a holding at fixed rates, or a transferee anticipating pre-emption takes measures to evade the law, even though the landlord does not wish to pre-empt, he will be compelled to contest the transfer, for fear his not contesting it at once may be taken as an admission of the transferee's right to hold at fixed rates in perpetuity.

Had the Committee seen its way to accepting my amendments and confined the operation of this chapter to holdings under mukarrarí pattá or raiyats whose rights had been declared by a decree of Court, although the landlords' rights would not have been restored to them in their entirety, the mischievous effects of encouraging persons to

attempt to evade the law by setting up the presumption would have been avoided.

2. *Chapter V.—Restrictions on sub-letting.*

In respect to the right mode of treating the subject of sub-letting, I am at variance, nearly on all points, with the majority of the Committee.

I do not think there is any necessity to place restrictions on sub-letting with the sole object of discouraging it.

I believe the conversion of the occupancy-raiyat who sub-lets into a tenure-holder will be detrimental to the best interests of the landlords.

I believe it necessary to bring the system under some control, partly with a view to protect the occupancy-raiyat, but mainly with a view to protect the poorest class of cultivators, the raiyat's raiyats.

The power to sub-let is a necessity to the raiyat, possibly of even greater importance to him than the power to transfer.

It enables the occupancy-raiyat to tide over his temporary embarrassments.

It enables the labouring classes, who might not otherwise succeed in securing land to assist in the support of their families, to acquire it.

It is legal, and the practice has hitherto been under no sort of restriction, and under no sort of restrictions will it ever be abandoned.

As long as there exists a class of people craving for the possession of land and poorer than the people in possession, or a class who can put the land to more profitable use than the persons who at present hold it, or as long as the line which divides an usufructuary mortgage from a sub-lease remains undefined, sub-letting will be practised.

The sub-lessees should be protected, and while there is yet time the system should be brought under some sort of control.

The matter may soon force itself on the attention of the Government in such a way as to make the shirking of the question an impossibility.

3. *Chapter V.—On enhancement.*

Under the provisions of the draft Bill submitted to the Select Committee for report, the landlord might enter into an amicable arrangement with his tenant to receive an enhanced rent up to six annas in the rupee on former rates, provided the enhanced rent did not exceed one-fifth the value of the gross produce of the land in staple crops.

He might enhance under suit, on the grounds that the rate paid for the land was below the prevailing rate in the neighbourhood, on the ground that the productive powers of the land had increased otherwise than through the agency of the tenant, and also on account of a permanent rise in prices, provided the enhanced rents did not exceed one-fifth the value of the produce in staple crops, and provided it should in no instance exceed double the previous rent.

Both in the instance of voluntary enhancement and enhancement under suit, the enhanced rent was to hold good for a term of ten years. Under the Bill as revised by the Select Committee, enhancement under contract is in no instance to exceed four annas in the rupee.

Below two annas or up to two annas it shall hold good for seven years, above two annas for fifteen years.

Judicial enhancement by reason of the holding being held at a rate below the rate prevailing in the neighbourhood may be made up to fifty per cent. increase on the former rate, and on account of a permanent increase in prices up to twenty-five per cent.

In any case decided on its merits, whether enhanced or not, the rate shall hold good for fifteen years.

The one-fifth limit has been abandoned in both instances.

Legal enhancement has, I admit, been made very much easier than it is under the present law; but I humbly submit that the omission of a limit which was admitted on all hands to be unascertainable is not sufficient reason for placing the restrictions on enhancement that the majority of the Committee have thought it necessary to place upon it, either in the way of reducing the limit or increasing the term.

It is to be presumed that tenants with fixity of tenure secured to them will only agree to an enhanced rent out of Court, when they know that the landlord by going to Court might get a very much higher rate decreed.

I do not approve of the policy which drives both landlords and tenants to appeal to a Court of law in matters which they can decide very much better for themselves.

In the matter of voluntary enhancement, it was only necessary to declare that enhancement under contract should be under registered agreement, and that the tenant in agreeing to it acted as a free agent.

If it was necessary to put a limit to the amount, the term should have been left to contract.

The fifteen-year limit being adopted in both instances, the landlord will exact the last farthing of what is due to him: we permit no compromise.

It is but fair to the Committee to say that I was alone in the desire to see the arbitrary limit on enhancement on account of the holding being held at a rate below the rent prevailing in the neighbourhood omitted; but I still think it would have been better to have left the matter to the discretion of the Courts.

The Courts have been given the power to make the enhancement gradual over a period of five years. They should be unfettered on both points.

4. *Chapter VIII.—On the right of an occupancy-raiyat to hold at fixed rates.*

Section 64 (1), Ditto (2), Ditto (3). The first allows a raiyat whose rents have not been changed from the time of the Permanent Settlement to hold his land at that rent in perpetuity.

The second allows it to be presumed, until the contrary is proved, that a raiyat who has held his land at one rent for 20 years previous to the introduction of the suit has held it at that rent from the time of the Permanent Settlement.

The third makes the above rule applicable to commuted rents also.

In my notes filed with the rest of the papers on the Bill, I recorded my dissent with the provisions of these sections as they then stood in the Bill; the alterations now made are alterations in form, not in substance.

During our discussions in Committee no arguments were submitted, no attempt was made to justify their being originally embodied in Act X of 1859, none in reply to the assertion that they were an infringement on the terms of the Permanent Settlement, none to induce me to alter the opinion expressed by me in my notes.

The pleas urged for their retention in the present Bill were, that they represented the present law, that no case had been made out to induce the Committee to alter the present law, and that it is more difficult for the raiyat to prove his right to hold at fixed rates, than it is for the landlord to prove how, when and on what terms the raiyat was let into possession of the land.

We urged that the Permanent Settlement and its concomitant Regulations never intended that any class of raiyats other than mukarrarídárs and

istimrárdárs should hold their lands at one fixed, unalterable rate in perpetuity.

That it never contemplated the creation of any "privileged" class among occupancy-raiyats.

That Act X of 1859, in creating a privileged class among occupancy-raiyats, trenched upon the proprietary rights of the landlords, and, in securing to the raiyats a right to hold their lands at a fixed rent in perpetuity, it reduced the proprietors to the position of annuitants on their own estates.

In declaring that the presumption shall run from twenty years previous to the introduction of the suit instead of from a fixed date it became a constantly accruing title.

That the privilege being a valuable one, one that it is to the interest of the raiyat to acquire in the future and to the interest of the landlord to prevent his acquiring, it was detrimental to the best interests of both to retain it in the Bill in its present form: it caused constant friction.

At the same time as I denied the justice of its enactments in Act X of 1859, I admitted that it would be harsh and unjust to cancel rights that had grown up under the operation of the present law.

To obviate all appearance of acting unjustly to raiyats who had secured such rights I proposed that the presumption should run from 20 years previous to the introduction of the Act, instead of, as it now does, 20 years previous to the bringing of the suit. I humbly submit that, had the Committee adopted this suggestion, raiyats who have secured to themselves the right to hold at fixed rates would have been secured in their titles, and the first instalment of justice would have been meted out to the zamíndárs. In a Bill which is admittedly being enacted to define the rights of landlord and tenant in the future, which is being passed to restore to the raiyat rights he is supposed to have been deprived of by the legislation of the past or that he has forfeited by his own carelessness or by his own acts, it is but fair to the landlord to restore to him anything that the loose legislation of the past may have deprived him of.

If it is found impossible to return to him what he has been deprived of in the past, he should at least be protected in the future.

Under the terms of the Permanent Settlement, only mukarrarídárs and istimrárdárs were allowed to hold at fixed rates; not so occupancy-raiyats.

Previous to Act X of 1859 any person claiming a right to hold at fixed rates or rents was obliged to prove his title to do so from a date 12 years antecedent to the decennial settlement, his title was otherwise not complete; that is to say, his title was not dependent on anything contained in the Permanent Settlement, but on the acts of the zamíndárs themselves previous to the settlement.

At the time of the Permanent Settlement the cultivators of the soil were divided into three classes—mukarrarídárs or tenure-holders, resident-raiyats with prescriptive rights of occupancy and non-resident-raiyats or tenants-at-will. Act X of 1859 was the first attempt made during 66 years to give non-resident-raiyats rights of occupancy in the soil; in their case, at any rate, the right to hold at fixed rates cannot be founded on anything contained in the terms of the Permanent Settlement, and the landlord should not be called upon to rebut the presumption: the onus of proving the right should be cast on the raiyat.

At the time of the Permanent Settlement, and previous to Act X of 1859, all raiyats with rights of occupancy were treated alike in the matter of rents—"all" were expected to pay the prevailing rate.

It is difficult to find out from a reference to the published papers relating to the passing of Act X of 1859 what led up to the embodiment of these provisions in that Act.

In the draft Bill published in 1857, it only says "hereditary raiyats holding at fixed rates of rent are entitled to receive pattás at those rates", but no mention is made of the 20 years presumption afterwards embodied in the Act of 1859.

Had the Bill of 1857 not been amended, the onus of proving his right to hold at fixed rates would still have been cast on the raiyat claiming it.

In all the published criticisms on this draft Act, Mr. Sconce alone fully discusses the raiyat's right to hold at fixed rates, but he founds the right upon the higher and more intelligible ground that "the Permanent Settlement was not one-sided—permanent for the landlord and not permanent for the tenant"; but he errs in drawing this inference mainly from the provisions of sections 51 and 60 of Regulation VIII of 1793. On a reference to these sections it will be found that the former refers to taluqs, and from the operation of the latter the Province of Bihár was exempted.

I would submit that, if we are to maintain the present law as against the landlord, simply because it is the present law, we are not justified in going beyond the present law in favour of the raiyat as we have done in many instances.

In reference to the declaration often made that it is easier for the landlord to rebut the presumption than for the raiyat to prove his right, I would only repeat that the persons who make this assertion have no conception of the difficulties in the way of the landlord; that it is easier for any given number of tenants to prove their landlord's handwriting than for the landlord to prove the execution of documents executed by men who could not write; and that all the old Regulations made it compulsory on the landlord to execute a document in favour of the raiyat. None made it compulsory on the raiyat to execute one in favour of the landlord.

The present law provides for cases in which the rent has always been paid in cash; under the present Bill, it is intended to go a step further and apply the rule to commuted rents.

Although I was in the unenviable position of sole dissentient on this point in Committee, I must still beg to be allowed to protest against this clause being made law.

It goes far beyond anything we are justified in enacting; it is equal to allowing every raiyat who formerly held at a grain-rent, and now holds at a cash-rent, to hold at one fixed, unalterable rent in the future.

Severely as these provisions bear on the landlords under the present law, they will bear ten times more severely on them in the future.

With the interchange of pattás, and kabúliyats made no longer necessary, the future is in the hands of the raiyat.

Useful as the powers to be given to the Local Governments under the Record-of-rights and Settlement of Rates Chapters may be made in the future, with these provisions unaltered our Courts will be deluged with litigation and the zamíndárs ruined.

Their effect can only be minimized by confining their provisions to rents to be commuted in the future and fixing a date from which the presumption is to count.

Their effect on the transfer and pre-emption clauses I have already noted

5. *Chapter IX.—Sub-division of holding.*

The Bill declares an occupancy-holding shall in the future be transferable, and rightly declares it shall only be transferable as a whole.

A transfer of a portion of a holding is declared void as against the landlord.

The right to transfer has not hitherto been among the legal incidents of an occupancy-holding: the Courts have times out of number declined to give a transferee a right to hold the land when purchased as against the will of the landlord. In spite of the uncertain tenure of the transferee we see rights of occupancy being sold under voluntary sales and sold under decrees of Court in every district in the province.

In some districts it has become so fixed, it has become so common in spite of its illegality, that the custom now overrides the law.

The prevalence of the custom in spite of its illegality is now forcing the Government to declare it valid.

It is now proposed to legalize the transfer of an entire holding, but to declare it illegal as against a landlord to transfer a portion of a holding.

To legalize the transfer of a portion of a holding would be bad policy—bad for the landlord, worse for the raiyat; but to declare the act of a raiyat void as against the landlord and legal as against himself is to permit a state of things to grow up gradually which will eventually force the Government to interfere and legalize proceedings which they now deprecate.

To allow it to be illegal as against the landlord and legal as against the raiyat will not prevent the raiyat transferring it—it will only depreciate the market-value of the holding.

As the raiyat's necessities arise, he will dispose of his holding piecemeal from the fact of its being invalid against his landlord possibly at one-half of its value.

There are three ways of preventing the raiyat disposing of his holding piecemeal, namely:—

to declare a transfer of a portion of a holding illegal as against both landlord and raiyat;

to allow the landlord to treat the transfer as an abandonment of that portion;

to deem the raiyat to have broken a condition on breach of which he is, under the terms of an agreement between him and his landlord, liable to be ejected.

The last is the most drastic, and the one I advocated.

6. *Chapter X.*

Under this chapter the Local Government may at the request of a landlord, at the request of a large number of raiyats or to avert a dispute, order a settlement to be made of the rents of the whole estate.

Under this chapter as it stands the rent-roll settled or ascertained of the estate must hold good for a period of 15 years after a settlement is made, provided nothing debarred the landlord applying for an enhancement.

(1) It would hold good in cases where the landlord applied for an enhancement, and the enhancement was allowed.

(2) It would apply in cases where his application was disallowed.

(3) It would apply where the landlord had a right to apply and did not.

(4) It would hold good in all cases where the settlement was made at the request of a number of raiyats.

(5) It would either compel the landlord to attempt to enhance the rents of all raiyats who were not parties to the application or to be debarred enhancing for 15 years.

(6) It applies to occupancy and non-occupancy-raiyats equally; it would therefore have this result, that it would at once give every non-occupancy-raiyat occupancy-rights.

(7) It will induce raiyats to demand a settlement in order to acquire rights they are not entitled to. It permits of no compromise.

The period should stand as it stood in the Bill, namely, 10 years.

It should only apply to cases in which the landlord applied for an enhancement or occupancy-raiyats had any dispute in reference to their rent.

A non-occupancy-raiyat should not be afforded the means of acquiring occupancy-rights under its shadow, or a most useful chapter will be turned into an instrument of oppression.

7. *Chapter XV.—Incumbrances.*

The last point on which I would wish to be allowed to record my dissent from the finding of the Committee is one of the utmost importance to the trader and also to the raiyat.

The Bill declares that a tenure, when sold under a decree of Court for arrears of rents, shall first be sold subject to registered incumbrances, but allows an occupancy-holding to be sold free from incumbrances.

The Bill certainly allows a person claiming to hold a lien on an occupancy-holding to protect his interests by paying up the arrears due and thereby to acquire a first mortgage; but this is not sufficient protection.

I do not agree with the Committee in thinking any distinction should be made between tenure-holders and occupancy-holdings.

Raiyats holding at fixed rates being subject to the same provisions as tenure-holders, will encourage litigation.

An attempt will be made to set aside the sales of occupancy-holdings by setting up the presumption to hold at fixed rates after sale.

Whether it will be the duty of the Court, the decree-holder, the debtor or the purchaser to enquire whether it is an ordinary occupancy-holding or an occupancy-holding at fixed rents that is brought to sale, or who will be responsible for any loss, should any occur, is not clear.

It was necessary to declare that the incumbrance to be protected was binding on the whole of the holding, not only on a portion of it, but nothing more.

In not affording the occupancy-raiyat this protection we injure his credit and force him to pay heavy interest where he might borrow on easier terms.

T. M. GIBBON.

Memorandum of dissent from the finding of the majority of the Select Committee on certain provisions of the proposed Tenancy Bill.

WHILE I concur generally with the majority of the Select Committee in accepting the provisions of the Bill as now revised, I think it right to add that in some particulars the interests of the tenants do not appear to me to be sufficiently protected. The Bill greatly facilitates the enhancement of rents, especially by the substitution of the simple ground of a rise in prices for the old rule which required proof of an increase in the value of the produce. While this great advantage has been given to the landlords, the check provided by section 75 (*d*)* of the original Bill has been taken away, the plea that the rate of rent paid by a raiyat is below the prevailing rate has been retained as a ground of enhancement, and the Bill provides no limitation whatever of the rent which a landlord may demand when a tenant (other than a settled raiyat) is first admitted to the occupation of land. Even in the case of a settled raiyat, the landlord may demand an increase of twenty-five per cent. on the rent previously paid. These sections put into the hands of landlords a powerful engine for enhancing rents up to the maximum amount which a tenant will agree to pay rather than give up the land. For, as agricultural holdings must, from time to time, fall into the hands of the landlords, and as the landlords are left free to let these out at almost any rental they may think fit to demand, it is evident that the prevailing rate will steadily increase, and that this rate will regulate the rents not only of tenants newly admitted to occupation, but of the general body of the tenantry. For this reason, the retention of the prevailing rate as a ground of enhancement appears to me to be fraught with serious danger, and I should be glad to see it eliminated from the Bill.

Similarly, I am of opinion that section 53 of the revised Bill does not sufficiently guard the interests of the tenant in cases in which the landlord applies for a commutation of produce-rents. The section ought to provide, first, that the money-rent shall not in any case exceed the rental at which the holding is entered in the landlord's road-cess returns: and, secondly, that if the commutation is based on the average value of the rent received by the landlord during the preceding ten years, a substantial deduction shall be made from such value in consideration of the whole risk of cultivation being taken by the raiyat. Provision was made for such a deduction in the draft Bill of the Rent Commission, and in the Bill submitted by the Government of Bengal.

The wording of section 96 of the Bill, relating to abandonment, seems to me likely to open the door to serious abuses. When a raiyat has been deprived of his holding under the plea of his having abandoned it, it is of very little use to authorize him to institute a suit for the recovery of possession. If this section is necessary at all, its operation should be confined to holdings in the possession of non-occupancy-raiyats. There is not the smallest reason for extending it to occupancy-holdings, as, in these cases, the landlord's rent is completely secured by his power of bringing the holding to sale for arrears.

H. J. REYNOLDS.

The 17th March, 1884.

* This clause declared that "the enhanced rent shall not in any case exceed one-fifth of the estimated average value of the gross produce of the land in staple crops, calculated at the price at which raiyats sell at harvest-time".

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 5, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 14th March, 1884:—

WE, the undersigned Members of the Select Committee to which the Bengal Tenancy Bill was referred, have considered the Bill and the papers noted in the schedule hereto annexed, and have the honour to submit this preliminary Report.

2. We have recast the Bill, and have embodied in the revised Bill such alterations as commended themselves to the majority of us, but there are various points on which we consider that further information is requisite, and we recommend that the Bill as altered by us should be republished for further criticism, in the interval that will elapse before we resume our labours in November.

3. The present Report being only a preliminary one, several members of the Committee wish it to be recorded that they postpone the expression of their opinions on particular points until the final Report is submitted to the Council. It must also be understood that generally in referring to the decisions of the Committee we state the views of the majority.

CHAPTER II.

CLASSES OF TENANTS.

4. This chapter has been introduced for the purpose of describing the different classes of tenants with which the Bill deals. It will be seen from it that raiyats at fixed rates are now treated as a distinct class instead of being, as in the original Bill, a sub-class of tenure-holders. It will further be observed that the term "non-occupancy-raiyats" has been substituted for "ordinary raiyats," which latter term has been justly objected to as a misnomer Lastly, it will be seen that tenants of homestead or Bastu land, which is not part of an occupancy-holding, have no place in the revised Bill. It may be that on further consideration it will be found desirable to introduce into the Bill some provisions relating to tenants of this class, but at present we have not before us the information requisite for dealing with the questions involved. It is clear that, owing to the various conditions which attach to the holdings of such tenants in different parts of the country, Chapter VII of the original Bill would, if it were to be retained, need amendment in certain particulars. But we are unable to formulate this amendment, pending the receipt of further information, which we hope will be supplied by the Local Government.

5. In the section which relates to the distinction between tenure-holders and raiyats, we have endeavoured to describe, rather than to define, each class. Whilst recognising the expediency of laying down rules for the guidance of Courts in dealing with cases which lie near the border-line between the two classes, we retain the opinion that any attempt to frame a rigid definition of either class would tend to create, rather than to remove, difficulties.

CHAPTER III.

TENURE-HOLDERS.

6. The sections (14-17) of the original Bill relating to the right to hold at fixed rates have been removed to Chapter VIII of the revised Bill, and will be more particularly referred to when we come to speak of that chapter. Section 20 of the original Bill, which contained a special provision relating to lands in temporarily-settled districts, has been transferred to the supplemental chapter.

7. We have made a considerable alteration in section 7, sub-section (3), which lays down the rules to be followed by the Court in enhancing the rent of a tenure in cases where the matter is not provided for by contract or custom. It is now simply enacted that the Court shall not leave the tenure-holder less than 10 per cent. of the profits, and in fixing the rent shall have regard to the circumstances under which the tenure was created, to the improvements made by the holder of it, and to the cost and risks of collection. We have left untouched the provisions that the enhanced rent should not be more than double the previous rent and that it should hold good for 10 years.

8. The special provisions of the original Bill relating to patní tenures, with the exception of the definition section (36), which has been transferred to the preliminary chapter, and the section (42) regarding summary sale, which has been placed in the chapter relating to that subject, have been included in this chapter.

9. Of the alterations we have made in the sub-division of this chapter relating to registration of transfers and successions, the following only seem to call for notice, namely:—

(1) the addition to sub-section (1) of section 15 of a proviso allowing a landlord to refuse to register a transfer of a tenure if any rent is in arrear;

(2) the abolition of the additional fee imposed by section 27 (2), clause (b), of the original Bill as a penalty for delay in applying for registration, and the insertion of a clause fixing the fee at Rs. 2 where no rent is payable by the tenure-holder [section 15 (2)];

(3) the addition to section 18 of a sub-section providing that a person becoming entitled to a tenure by transfer or succession shall not be entitled to recover rent by suit, distraint or other proceeding until the transfer or succession has been registered or a notice of it has been served on the landlord; and

(4) the amendment of the section (now section 21) relating to the granting of copies of entries in the register, so that the fee for every copy granted shall be such amount, not less than one anna or more than one rupee, as the Local Government may fix.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

10. In the matters of transfer and succession we have assimilated the conditions of the settled-raiyat holding at fixed rates to those of tenure-holders. It was suggested that this class of raiyats should be sub-divided into (*a*) those holding under a registered lease or judicially declared title, and (*b*) those holding at fixed rates under the statutory presumption, the former being assimilated to tenure-holders and the latter to raiyats with a right of occupancy; but the majority of us were unable to accept this proposal.

CHAPTER V.

OCCUPANCY-RAIYATS.

11. The main lines of this chapter, so far as regards the acquisition of the status of a raiyat and the right of occupancy, remain unchanged, and we have only to mention such alterations in the details as appear to us to call for notice.

Our attention has been drawn to the inconvenience which may arise in certain exceptionally large estates, such as those of the Maháráját of Burdwan and others, from the status of settled-raiyat holding good over the whole estate. We desire to learn if the Government of Bengal consider that in these exceptional estates any known fiscal or administrative area can be advantageously substituted for the area of an estate.

12. Another matter connected with the definition of "estate" for the special objects of this chapter, to which we desire to draw attention, is the provision in section 27 (6) to the effect that where a partition has taken place "since the first day of January, 1853" the parent estate shall, notwithstanding the partition, be regarded as a single estate. The date mentioned was chosen because it was understood that it might reasonably be expected that from about that time complete records of partitions would be forthcoming; but the particular point of time to which we should go back is of course open to further consideration, and accordingly we have directed that the words fixing it shall be shown in italics.

13. We have, at the instance of the Government of Bengal, inserted in section 26 (definition of settled-raiyat) a sub-section (2) providing that when it is proved or admitted that a person holds land as a raiyat, it shall be, as between him and his landlord, presumed for the purpose of the section, until the contrary is shown, that he has for twelve years held the land or some part of it as a raiyat. Such a presumption appears to us to be warranted by the existing state of things in the Lower Provinces, and, while it tends to simplify litigation, it is one which the landlord ought to have no difficulty in rebutting in any case in which it does not hold good.

14. We have [section 26 (6)] retained in substance the provision of the original Bill under which a person does not lose his status as a settled-raiyat merely by the accident of his being out of possession of a holding in the village or estate for any time not exceeding one year, but have added to it a clause [sub-section (7)] to the effect that if he recovers possession of any land under section 96 (as to which see *infra* paragraph 66) he shall be deemed to have continued to be a settled-raiyat notwithstanding his having been out of possession for more than a year.

15. The chapter relating to merger having been omitted from the Bill for reasons to be explained further on, we have thought it desirable, in order to prevent any misapprehension, to insert in this chapter a section (28), providing that, if the landlord of a raiyat having a right of occupancy acquires the interest of the raiyat by purchase or otherwise, the occupancy-right shall cease to exist, but that nothing in this provision shall prejudicially affect the rights of any third person.

16. We have omitted section 48 of the original Bill, which provided for the acquisition of the occupancy-right by grant, and have substituted for section 49 of that Bill relating to the acquisition of the occupancy-right in lands of the classes comprised under the term khámár as there defined, a section (30) simply providing that nothing in the chapter shall confer a right of occupancy in lands of those classes where such lands are held under a lease for a term of years or under a lease from year to year.

17. We have, in affirming that the raiyat may use the land in any manner that does not render it unfit for the purposes of the tenancy, added [section 31, clause (*a*)] that he shall not cut down trees thereon in contravention of any local custom.

18. In the division which relates to the landlord's right of pre-emption, and which is now headed "restrictions on transfer", we have [in section 32 (4)] provided that the landlord, if he elects to purchase, must tender the price within one month from the date on which it is agreed on or fixed, and we have also inserted words to allow the raiyat, if his landlord claims to purchase, the option of keeping the land.

19. We have further inserted in the same section a sub-section (5) providing that if the raiyat attempts to sell in contravention of the provisions of the section the sale shall be void as against his landlord.

20. We have omitted section 55 of the original Bill, which gave the landlord a right of pre-emption when the occupancy-right is bequeathed.

21. As regards gifts of the occupancy-right, we believe that the great majority of such gifts would be either of the nature of bequests or of merely fictitious transactions covering sales. It is only in the case of gifts of this latter class that the landlord seems to us to stand in need of any protection, and we think that sufficient protection will be afforded him by requiring that a gift must be made by a registered instrument, and that a copy of the instrument shall be forthwith served on the landlord so as to give him an opportunity of questioning the transaction if he sees any ground for believing that it is not *bonâ fide*. We have, however, exempted from this requirement gifts by Muhammadans to persons within the prohibited degrees, as such gifts are usually substitutes for testamentary dispositions (section 35).

22. Lastly, we have added a section (36) restricting the right of pre-emption to proprietors and permanent tenure-holders and other tenure-holders authorized by them to exercise it, as it seems to us that the exercise of such a right by a temporary tenure-holder, otherwise than with the permission of a superior landlord having a permanent interest in the land, would give rise to difficulties and complications which it is desirable to avoid.

23. Great objection has been taken to section 56 of the original Bill, which provided that when a landlord acquires the occupancy-right, any raiyat afterwards taking the land shall have an occupancy-right in it: this section we have omitted.

24. We have also omitted section 57, which conferred the status of a settled-raiyat on every person inheriting an occupancy-right in land. The object of this latter section seems to us to be sufficiently secured by section 26, (4).

25. The next division of this chapter, headed "restrictions on sub-letting", is new. It is based on certain proposals put forward by the Government of Bengal, and having for their objects to discourage the purchase of the occupancy-right by non-agricultural speculators and to protect the sub-lessee of a raiyat. This latter object, we may observe, could be only in part carried out by the provisions inserted here. Further provisions for securing it will be found in Chapter VII, relating to under-raiyats, of which we shall presently have to speak.

26. The main enactments in this sub-division of the chapter are—

1st.—That if the portion of his holding sub-let by an occupancy-raiyat exceeds half the holding, he shall, on being registered in a public register as a tenure-holder under an Act, which the Local Government propose to introduce into the Bengal Council for this purpose, be deemed to have become a tenure-holder, the result of which will be that his sub-lessees will become raiyats, with an actual or potential right of occupancy (section 37).

2nd.—That if a raiyat sub-lets his holding or any part of it the sub-lease shall not be valid for a period exceeding seven years (section 38).

These enactments are qualified by certain provisions, the most important of which are—

1st.—That they shall not apply to the case of a raiyat who is compelled to sub-let by being disabled from cultivation by age, sex, disease, accident or temporary absence from home in certain cases, and

2nd.—That when a raiyat is converted into a tenure-holder, as above-mentioned, his rent shall be liable to enhancement on the same terms and subject to the same

conditions as if he were an occupancy-raiyat, and thus the position of his landlord will in this respect remain unaffected.

27. These provisions gave rise to considerable difference of opinion, and we are not insensible of the inconvenience arising from allowing a change to be created in the legal relations of a raiyat, both towards his landlord on the one hand and towards his own sub-tenants on the other, as the result of his own acts; a change, moreover, which must be determined by an arbitrary line difficult to ascertain, and complicated by the numerous exceptions which the circumstances of the cultivators obviously demand. There seemed, however, to the majority of us to be no better way of placing restrictions on sub-letting (a practice which it is admittedly impossible to prohibit) than by rendering the sub-letting raiyat liable to the summary sale for arrears, which is to be made applicable to tenures, and at the same time enabling his sub-tenants to acquire rights of occupancy. These provisions illustrate the extreme difficulty of placing any substantial check on the practice of sub-letting, when it has once grown up. It will be observed that the converted tenure-holder, while liable to enhancement as an occupancy-raiyat, is in all other respects treated as a tenure-holder, and acquires with the liability to summary sale other incidents of tenure-holders, such as exemption from the pre-emption clauses, but that none of these provisions will come into operation until such time as he is registered. It was felt that to throw on the Courts the duty of ascertaining in a simple rent suit all the complicated conditions, which are connoted by his conversion, would be intolerable, and that the difficulty could only be met by the Local Government ascertaining and registering them. This it has undertaken to do.

28. The alterations which we have made in the provisions relating to the enhancement of the rent of occupancy-raiyats are considerable, both as regards form and substance.

We have removed the provisions relating to enhancement by means of a table of rates to a separate chapter following that relating to the record-of-rights and settlement of rents, and deal here only with enhancement in the ordinary way by contract or by a suit in Court.

29. As the Bill now stands amended the rent of an occupancy-raiyat cannot be enhanced by contract unless the contract is registered, and the following rules will apply to every such contract (section 41):—

(1).—The rent must not be enhanced so as to exceed by more than four annas in the rupee (25 per cent.) the rent previously payable by the raiyat.

(2).—The contract must fix the rent for a term of at least seven years.

(3).—If the enhanced rent exceeds by more than two annas in the rupee (12½ per cent.) the previous rent, the contract must fix the rent for a term of at least fifteen years.

(4).—The registering officer must, before registering a contract under this section, ascertain that the contract is in accordance with the provisions of the Act, and that the raiyat entering into it acts as a free agent. It will be observed that under the revised section the registering officer, instead of being required to approve a contract and to satisfy himself that it is fair and equitable, is now merely required to satisfy himself that it is in accordance with the provisions of the Act.

30. Further, it is provided (section 42) that where land, which has been previously held by a tenant at a money-rent, is let to a settled-raiyat of the village or estate in which it is situate, that raiyat shall not be bound to pay for it any rent higher than that which was paid for it by the previous tenant, except in pursuance of a registered contract, and that the rules just referred to shall apply to every such contract.

31. As regards enhancement by suit our object has been, while laying down rules which will be substantially just to both landlords and tenants, to devise a system which would avoid those elaborate and difficult inquiries, the necessity for which has made the present enhancement law an almost useless instrument in the hands of the landlords.

With this view we have specified the grounds on which an enhancement suit can be instituted, as follows (section 43):—

(*a*).—That the rate of rent paid by the raiyat is below the prevailing rate payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity.

(*b*).—That there has been a rise in the average prices of staple food crops in the locality or at the usual markets.

(*c*).—That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(*d*).—That the productive powers of the land held by the raiyat have been increased by fluvial action.

32. An enquiry had shown that an authoritative Table of Rates could be prepared by the Government of Bengal only for exceptional tracts, and no other general method has been submitted to us for placing before the Courts the information with respect to productive powers of the land which would enable them to apply the rules for enhancement on the ground of increase in those powers. But the zamíndárs objected to the total elimination of this as a legal ground of enhancement, and, as it was part of the old law, it has been retained. Enhancements on this ground when the increase is caused by the landlord's improvement will be facilitated by the system of enquiry and registration provided for hereafter; but enhancements on the ground of increase of productive powers caused by fluvial action will still, we fear, be liable to the same difficulty, caused by the absence of any proof of the former productive powers of the soil, as has rendered this ground of enhancement futile in past years.

33. On the other hand enhancement on the ground of prices would be greatly facilitated by the preparation of authoritative price-lists by the Local Government. It should be explained that the price-lists of staple food crops are to be taken simply as indicating a general rise or fall in prices, and without any reference to the particular crop grown on the land, the rent of which is in dispute; and our intention is that the price-lists should be worked out very much on the principle on which the commutation of tithes according to average prices is worked out in England as explained at pages 250 *et seq* of Mr. Justice Field's Digest.

34. It has been urged that, in applying the proportion rule in the case of prices, some deduction should be made to cover the effect of these increased prices on the cost of cultivation. We are however content for the present to leave the protection of the raiyat in this respect to the other restrictions on enhancements, especially to section 48, which provides that the Court shall not in any case decree an enhancement, which appears under the circumstances of the case to be unfair or inequitable. But the point will receive further consideration when the alterations made in this chapter have been subjected to public criticism.

35. The difficulty which, as we have explained, stands in the way of enhancement on the ground of an increase in the productive powers of the land, applies with no less force to the proposal to limit the maximum enhanced rent to one-fifth of the average annual gross produce. The majority of the Committee were of opinion that it would be almost impossible to ascertain in each instance the average annual gross produce expressed in staple crops, and weighty objections have also been taken to the principle underlying that proposal. We have accordingly struck out the provision to the above effect contained in section 75 (*d*) of the original Bill. As a set-off against this we have increased the stringency of another limitation contained in the original Bill by providing that, when rent is enhanced on the first ground mentioned above, the enhancement shall not amount to more than 8 annas in the rupee (50 per cent.), and that, when it is enhanced on the second or fourth of those grounds, the enhancement shall not amount to more than 4 annas in the rupee (25 per cent.), and by providing, as above stated, that the Court shall not in any case decree an enhancement which appears under the circumstances of the case to be unfair or inequitable (section 48).

36. In connection with enhancement up to the prevailing rate payable by occupancy-raiyats of the same class, we have in section 44 introduced a clause [(*c*)], based on section 20 of the North-Western Provinces Tenancy Act, providing for cases in which local custom may make it necessary to take into consideration the caste of a raiyat.

37. As regards enhancement on the ground of an improvement made by the landlord, we have laid down no hard-and-fast rule, but have merely provided [section 46 (*b*)] that in determining the enhancement to be allowed the Court shall have regard to—

(i) the increase in the value of the produce caused by the improvement,

(ii) the cost of the improvement;

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

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

And, in order to avoid perplexing inquiries into matters long past, we have provided [section 46 (*a*)] that the Court shall not grant an enhancement unless the improvement has been registered, that is to say, registered in accordance with the rules which are laid down in Chapter IX, and which, as will be seen, are so framed as to secure that all requisite information will be duly placed on record.

38. The leading rule adopted by us for enhancement on the ground of increase of productive power arising from fluvial action is suggested by that proposed by the Rent Commission, and is to the effect that the landlord shall not have more than half the value of the net increase in the produce of the land [section 47 (*c*)].

39. Section 78 of the original Bill, which limited the right to bring successive enhancement suits, has now (section 50) been restricted to suits on the ground that the rent paid is below the prevailing rate, and suits on the ground of an increase of prices; but the restriction will now apply to cases in which a suit for enhancement has been dismissed on the merits as well as to cases in which enhancement has been decreed, and the period which must elapse between successive enhancements has been extended from ten to fifteen years.

40. The grounds on which a suit for reduction of rent may be brought are in the amended Bill (section 51) limited to the following:—

(*a*) that the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand or other like calamity, and

(*b*) that there has been a fall in the average prices of staple food crops in the locality.

In either case the Court is to direct such reduction of the rent as it thinks fair and equitable.

41. Section 52 of the amended Bill, which provides for the preparation of authoritative price-lists, differs from the corresponding section of the original Bill in certain particulars; but the only alteration which we need notice here is that the new section empowers the Local Government to direct price-lists to be prepared for past years as well as for current years. Materials for such price-lists exist in the statements of prices published regularly by the Bengal

Government during the past 12 years, and, if it be possible to correct these lists and render them a trustworthy record of local prices, the work of the Courts in enhancing rents on the ground of a rise in price will be greatly simplified.

42. Section 80 of the original Bill, which provided for the enhancement of the rent of pasture lands, has been omitted, as it is understood that the letting of land to individual tenants for grazing purposes is so very rare that no special rules are needed to regulate it.

43. Section 81 of the original Bill, which prescribed a limit to the amount of the rent payable in kind by an occupancy-tenant or varying with the crop, has likewise been omitted, because it was found that local usage on the point was exceedingly complicated, large deductions being usually made from the crop for various purposes before dividing it, and that to draw a hard-and-fast line would very probably mislead the Courts and have an injurious effect.

44. The section (53) providing for the commutation of rent payable in kind has been recast on the lines of section 16 of the Central Provinces Tenancy Act, 1883. As it now stands it admits of an application for commutation being made to certain officers, either by the landlord or the tenant, and empowers the officer to whom it is made to refuse it if it is opposed. Further, the new section allows a larger discretion than the original section in determining the amount of the money-rent to be paid. It merely provides that in making the determination the officer shall have regard to—

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

(*b*) the average value of the rent actually received by the landlord during the preceding ten years.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

45. Section 89 of the original Bill provided that the non-occupancy-raiyat, or, as he was termed in that Bill, the "ordinary raiyat", should pay such rent as might be from time to time agreed on between him and his landlord, but subject to the provisions of section 119, which made five-sixteenths of the average annual value of gross produce the maximum of the rent. We now propose to abandon this maximum for the reasons which led us to abandon the corresponding maximum in the case of the enhancement of an occupancy-raiyat's rent, and the question accordingly arises whether any other restriction should be placed on contracts fixing the rent of a non-occupancy tenant. The majority of us are opposed to any such restriction, and accordingly the amended Bill leaves the parties free except in so far as it provides (section 57) that the rent shall not be enhanced after the raiyat has been admitted into occupation of the land, except by registered agreement or in the manner allowed by certain sections of the chapter to be presently noticed.

46. In section 58, which states the grounds on which a non-occupancy-raiyat is liable to be ejected, we have introduced a clause permitting him to be ejected, when he has for the first time been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired; but we have provided in the following section (59) that a suit for ejectment on this ground shall not be instituted unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

47. We have also decided to strike out the clause giving the non-occupancy-raiyat compensation for disturbance, but have provided in lieu thereof (section 60) that when an ejectment suit is brought against a non-occupancy-raiyat on the ground of his refusal to pay an enhanced rent, the Court shall fix a fair and equitable rent, and the raiyat shall have the option of holding on at that rent for a term of five years, after which he will be liable to be ejected on the same conditions as after the expiry of an initial lease, provided rights of occupancy have not accrued to him in the meantime.

CHAPTER VII.

UNDER-RAIYATS.

48. We have already (*supra* paragraphs 26 and 27) referred to the new provision introduced into the Bill which, by converting an occupancy-raiyat who sub-lets half his land into a tenure-holder, confers upon his sub-lessees the status and advantages of raiyats. The chapter now under consideration provides a certain amount of protection to under-raiyats who are not entitled to the benefit of that provision.

Section 62 provides that the landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, namely :—

(*a*) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and

(*b*) in any other case—twenty-five per cent.

And section 63 provides that an under-raiyat shall not be liable to be ejected by his landlord, except at the end of an agricultural year, and after a written notice to quit has been served on him in the prescribed manner not less than six months before the expiration of that year.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

49. This chapter opens with the provisions relating to the right of tenure-holders and raiyats to hold at a fixed rent, which have been transferred from the opening of the original chapter relating to tenure-holders. The only change made in these provisions which seems to call for notice here is the addition of a clause to sub-section (*2*) of section 64, providing that, if an enactment should hereafter be passed requiring the registration of permanent tenures or of tenancies at fixed rates, the well-known presumption from twenty years' holding shall cease to apply to any tenancies which are not registered within the time fixed. The Local Government, we understand, propose shortly to introduce into the Bengal Council a Bill establishing a registration system of the nature just referred to, and, if that Bill becomes law, it will, we believe, with the aid of this clause, afford, so far at least as those classes of tenancies are concerned, the best remedy for the hardship which the landlords complain of as caused to them by the retention on the Statute Book of the presumption in question. The above presumption will also cease to apply when a record-of-rights has been prepared (see *infra* para. 77)

50. In section 66, (*2*), we have omitted the hard-and-fast rule laid down in the corresponding section (96) of the original Bill, that in calculating the addition to be made to the rent of a tenure on account of an addition to the area comprised in it, 30 per cent. should be allowed for profits, risk and cost of collection; and have merely provided that the Court shall have regard to the profits to which the tenure-holder is entitled in respect of the rent of his tenure.

51. In the section (67) relating to instalments of rent we have omitted as unnecessary the somewhat complicated proviso appended to section 98 of the original Bill.

52. We have in section 68 inserted a clause empowering the Local Government to try the experiment of making rules authorizing a tenant to pay his rent by postal money-order—a mode of payment which we think may in some cases be found convenient.

53. In sections 70 and 71 we have, instead of stereotyping the contents of the receipts and accounts to be furnished to tenants, given forms of these documents (in a schedule), and empowered the Local Government to alter them as convenience may require.

54. We have in section 70, (*4*), relaxed the stringency of the corresponding provision [section 100 (*4*)] of the original Bill by providing that a receipt not containing substantially the required particulars shall merely be "presumed until the contrary is shown" (instead of "deemed") to be an acquittance in full of all demands up to date.

55. It has been suggested that we should provide for applications for the withdrawal of rent deposited being exempted from Court-fees. We think such an exemption desirable, but it is within the power of the executive authorities to arrange for its being made, and we prefer to leave the matter in their hands.

56. We have, in the section (78) providing for ejectment from a non-transferable holding for arrears of rent, added a sub-section empowering the Court for special reasons to extend the period allowed for the payment of the rent.

57. We have empowered the Collector to depute an officer to divide or appraise the produce of a bhaoli holding, not only on the application of one of the parties concerned, but also in any case in which, in the opinion of the Magistrate of the District or Sub-Division, such action would be likely to prevent a breach of the peace [section 81 (*2*)].

58. We have further empowered the Collector in all cases to pass such order as he thinks just on the report of the officer deputed, and have provided that his order shall be final and be enforceable as a decree, unless he thinks fit to refer any question in dispute between the parties for the decision of a Civil Court [section 82 (*4*) and (*5*)]. This seems to us a simpler and more convenient procedure than leaving the parties to seek redress in the Civil Court in the first instance, as under the original Bill.

59. For section 117 of the original Bill we have substituted a section (set out in the margin) dealing comprehensively with the rights and liabilities of the landlord and tenant as to possession of the crop in cases where rent is taken by appraisement or division of the produce.

Rights and liabilities as to possession of crop.

83. (*1*) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(*2*) Where rent is taken by division of the produce, the tenant shall be entitled to exclusive possession of the whole produce until it is divided.

(*3*) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord, but shall not be entitled to remove any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time.

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

The penal provision of section 117 of the original Bill has not been reproduced here, as the matter is sufficiently provided for in the more general penalty clause now inserted in Chapter XIX. (section 220).

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

60. We have introduced a new section (88) providing that when a raiyat holds at a fixed rent or fixed rate of rent his landlord shall not be entitled to prevent him from making an improvement.

61. We have in section 89 (*3*) empowered the Collector to decide finally any question between an occupancy-raiyat and his landlord—

(*a*) as to the right of the raiyat to make an improvement, and

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

62. We have, in order to facilitate the decision of disputes regarding improvements, introduced a section (92) based on section 80 of the Central Provinces Tenancy Act, 1883, providing that a landlord or tenant, desiring to have any evidence recorded regarding an improvement which has been made, may apply to a Revenue-officer to record it, and that the record so made shall be admissible in subsequent proceedings between the parties. We have also as intimated (*supra* para. 37) introduced a section (91) providing for the registration of improvements made by landlords.

63. Section 129 (*4*) of the Bill as introduced provided that improvements made by a raiyat before the commencement of the Act should be deemed to have been made in accordance with the Act unless it was shown that the landlord forbade the raiyat to make the improvement and was ready to make it himself. For this we have substituted a sub-section [section 93 (*4*)] providing that improvements made by a raiyat between the 2nd day of March, 1883 (the day on which the Bill was introduced) and the commencement of the Act, shall be deemed to have been made in accordance with the Act. This prevents the section from applying retrospectively to any improvements made before the introduction of the Bill.

64. We have in section 94 somewhat enlarged the list of matters to be taken into consideration by the Court in estimating the compensation to be allowed for an improvement, the most important additions being the condition of the improvement with reference to its duration, and that "in the case of a reclamation or of the conversion of unirrigated into irrigated land" the Court shall have regard "to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent".

65. We have re-drafted the section (95) relating to surrender by a tenant, on the lines of section 33 of the Central Provinces Tenancy Act, 1883, and, in order to remove a misapprehension which appears to exist in some quarters, have added a sub-section (*5*) expressly providing that when a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

66. The difficulties which arise in cases where a raiyat to all appearance abandons his holding, but the landlord cannot be sure whether he can safely assume the holding to have been abandoned and let it to another tenant, we have attempted to meet by the section set out in the margin.

Abandonment.

96. (*1*) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(*2*) When a landlord enters under this section he shall cause a notice in the prescribed form to be published in such manner as the Local Government, by rule, directs, stating that he has treated the holding as abandoned and has entered on it accordingly.

(*3*) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may order recovery of possession on such terms, if any, with respect to compensation to persons injured as to the Court may seem just.

67. We have in section 99, which prohibits a landlord from measuring land more than once in ten years without the consent of the tenant or the permission of the Collector, allowed exceptions in the following cases, namely:—

(*a*) Where the area of the holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area.

(*b*) Where the area under cultivation is liable to vary from year to year, and the rent payable depends on the area under cultivation.

(*c*) Where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

68. In section 101, relating to the standard of measurement, we have introduced a sub-section empowering the Local Government after local inquiry to make rules declaring for any local area the standard or standards of measurement in use, and have provided that every such declaration shall be presumed to be correct until the contrary is shown. This, we think, will render section 138 of the original Bill unnecessary, and we have accordingly omitted it. Other provisions connected with measurement will be found in the chapter (X) concerning the record-of-rights.

69. In the division of this chapter relating to the appointment of a manager to act on behalf of co-owners of an estate or tenure we have added a section (109) empowering the High Court to make rules defining the powers and duties of managers.

70. We have omitted the section relating to merger. It was in our opinion open to serious objection, not only from the particular point of view of the framers of the present Bill, inasmuch as it allowed of the occupancy-right being retained in the hands of a landlord, his tenants being thus reduced to the position of under-raiyats, but also from a more general point of view, inasmuch as it conferred on individuals a large and arbitrary power to introduce, without any sufficient reason, a serious complication into the law of property, and one moreover which would be likely to serve as a cloak for fraud.

The immediate requirements of this Bill are, we think, sufficiently met by the section (28) which we have introduced into the occupancy chapter, and to which we have already referred (*supra* para. 15); and for the rest we are of opinion, after giving our best consideration to the views of the Hon'ble Mr. Justice Field, that the general question of merger is somewhat outside the proper scope of the present enactment.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

71. We have found it convenient to embody in a single chapter the two chapters of the original Bill relating to the above subjects, and to start with the record-of-rights, which is the simpler of the two.

72. The difficulty from the absence of a record occasionally felt, especially by a person who purchases an estate or tenure at a compulsory sale by auction, will, we think, be met by the new section (112) which admits, subject to certain conditions, of a record-of-rights being framed by Revenue-officer on the application of a proprietor or tenure-holder.

73. As regards the procedure in framing a record-of-rights, it will be observed that an important change has been made. Under Chapter XII of the original Bill the procedure was to be summary in all cases, whether there was or was not a dispute as to the entry which ought to be made in the record, and the result in all cases alike would have been merely an entry in the record, which would be *primâ facie* presumed to be correct, but would be open to be impugned in a Civil Court. In the amended Bill, on the contrary, a fuller opportunity is allowed for raising objections by a preliminary publication of the record, and if any entry, which it is proposed to make or which has been made, is called in question, the Revenue-officer is to inquire into the dispute according to the regular procedure of a Civil Court, and his decision is to have the force of a decree and to be appealable first to a special judge appointed to hear such appeals, and then, subject to the usual limitations of second appeals, to the High Court. Thus, in any case in which there is a dispute regarding an entry in the record, the question will be placed on the footing of a *res judicata*. Where, up to the time allowed after the preliminary publication of the record for preferring objections, no objection is made, the entry will be marked as undisputed, and as proposed in the original Bill will simply be presumed to be correct until the contrary is proved. We think that, having regard to the large scale on which those operations will be conducted, and to the impossibility of being sure that any sort of publication would bring home to every individual concerned the precise nature of the entries being made regarding him, we could not venture to give an undisputed entry any authority higher than that just mentioned.

74. The operation termed a "settlement of rents" includes, in addition to the preparation of a record-of-rights, the settlement of all such rents of occupancy-tenants and tenure-holders

holding otherwise than at fixed rents, as either the landlord or the tenant may apply to have settled.

The questions whether a rent is open to settlement, and, if so, the amount at which it should be settled, are of a complex nature depending on two very different sets of considerations. They depend in the first place on issues, relating to such matters as the existence of the tenancy, the extent of the land, the status of the tenant, the conditions under which he holds, &c., and possibly involving points of law, which could not satisfactorily be decided without the security afforded by an ultimate appeal to the highest judicial authority. They depend in the second place on considerations of an economical nature, such as the state of prices prevailing at different periods, the effect of improvements, and so forth, which it is universally admitted cannot be adequately dealt with either in the first instance or on appeal except after local inquiry and by persons possessed of special technical knowledge. The problem before us has been how best to provide for the separation of these two elements, so that each may be dealt with, and finally dealt with, by those most competent to deal with it. The solution of this problem proposed in the original Bill will be seen on referring to section 160 of that Bill. The modification above described in the record-of-rights procedure, and especially the introduction of the special judge, who will doubtless always be an officer possessing a familiarity with the local agricultural system, in addition to judicial qualifications, has opened the way to what appears to us to be a more satisfactory solution. What we propose is that when a rent, which has been settled or which it is proposed to settle, is disputed, the dispute shall be dealt with by the Revenue-officer in the same way as a dispute regarding an entry in the record-of-rights, that an appeal on the whole question shall then lie to the special judge, and that his decision shall be final unless, in a second appeal in respect of one of the record-of-rights entries with reference to which the rent has been settled, the High Court alters the decision of the special judge. In this case the High Court may settle a new rent, but in so doing is to be guided by the other rents shown in the rent roll. In other words, there can be no second appeal to the High Court merely on the ground that the rent has been pitched too high or too low, but if a second appeal is preferred, as it may be, on the ground that the special judge, owing to some error on a point of law, has, for example, found the holding to comprise more land or less land than it actually does comprise, and the appellant succeeds, the High Court can, without altering the rates, reduce or increase the rent, as the case may be.

75. We have, in section 120, provided that, when a landlord is entitled under the foregoing sections to apply to have the rent of a holding settled, the rent of the holding, whether he applies and has it settled or it is merely ascertained, shall not be enhanced for fifteen years, except on the ground of an improvement made by the landlord or of an increase of the area of the holding.

76. Section 121, providing for the payment of expenses, has now been made applicable to the preparation of a record-of-rights as well as to the settlement of rents.

77. The only other provision of this chapter which appears to call for notice is the new section (122) which enacts that when the particulars of a tenancy have been recorded under the chapter, the well known presumption arising from twenty years' holding at a fixed rent shall cease to apply.

CHAPTER XI.

TABLES OF RATES.

78. We have been guided, in dealing with the subject of this chapter, by the views of the Government of Bengal. It appears from the enquiries that have been made that, owing to the great diversity of rates, it would in most parts of the country be impracticable to frame general tables of rates applicable to large tracts; but in special tracts the preparation of such tables may still, in the opinion of the Government of Bengal, be found a preferable alternative to the plan of a general settlement of rents by the Revenue-officer. In the latter case the Revenue-officer goes on the ground and himself decides all questions at issue. In the former case the Revenue-officer merely ascertains and records general facts which will serve as a guide to the Courts, whose business it will be to apply them to the circumstances of particular disputes brought before them. We have, therefore, retained the procedure with only a few minor alterations, but it will no longer be so important a feature as it was in the original Bill.

CHAPTER XII.

RECORD OF PROPRIETOR'S PRIVATE LANDS.

79. In dealing with the difficult question of khámár or zeraat land we have provided two alternative methods of procedure—

(*a*) that of survey and registration of such land by a Revenue-officer, by order of the Local Government;

(*b*) that of enquiry on the application of the individual landlord or tenant concerned.

The former procedure would apply to large areas where the question is important, the latter to disputes about particular plots of land. At the request of the Government of Bengal the two methods of procedure have been left equally applicable to any part of the country. We have made no distinction in the description of this land between Bengal and Bihár, but we have directed regard to be had in every case to local custom, and, while making it incumbent on the Revenue-officer to record certain lands as the proprietor's private land, have endeavoured to assist him by certain guiding rules in cases not clearly coming under these heads. The section is reproduced below.

Rules for determination of proprietor's private land.

138. (*1*) The Revenue-officer shall record as a proprietor's private land—

(*a*) land which is proved to have been cultivated as khámár, zeraat, sír, nij, nij-jot or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village-custom as proprietor's khámár, zeraat, sír, nij, nij-jot or kamat.

(*2*). In determining whether any other land ought to be recorded as a proprietor's private land the officer shall have regard to local custom and to the question whether the land was before the 2nd of March, 1883, specifically let as proprietor's private land, but shall presume that land is not a proprietor's private land until the contrary is shown.

(*3*). If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

CHAPTER XIII.

DISTRAINT.

80. The only changes made in this chapter to which it seems to us necessary to direct attention are the following :—

(*a*) Section 167 (*2*) of the original Bill, which made an application for distraint liable to the same Court-fee as a suit for the arrear of rent, has been omitted.

(*b*) Produce already stored has been exempted from distraint.

(*c*) The Court is empowered (section 141 (*3*) and (*4*)) to issue in certain cases an order prohibiting the removal of the produce pending the issue or execution of an order of distraint.

(*d*) It has been made clear (section 147) that crops which admit of being stored are not to be sold standing.

(*e*) Section 186 of the original Bill, which under certain circumstances imposed a penalty on persons on whose behalf an offence under section 185 is committed, has been omitted.

(*f*) On the other hand, express provision has been made in the first section of Chapter XIX for punishing abetment of the offences in question, and it has been made clear (section 158) that a person, whose property is distrained under cover of this chapter, but in a case to which it does not properly apply, has his remedy by suit against those who put the Court in motion.

(*g*) Section 187 of the original Bill, which empowered the Local Government to suspend the operation of the chapter, has been omitted.

CHAPTER XIV.

JUDICIAL PROCEDURE.

81. We have excluded suits for penalties and suits for the recovery of possession of land from the special procedure prescribed in sections 191-197 of the original Bill.

82. We have introduced at the opening of this chapter a section (159), modelled on a section in the Presidency-towns Small Cause Court Act, empowering the High Court, with the approval of the Local Government, to make rules declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant, or shall apply subject to modifications. We trust that as experience is acquired of the working of the Courts under the new Act it may be found possible to exercise this power so as to effect further simplifications in procedure.

83. For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent suits, we are unable to suggest anything of importance in this direction which would not involve a serious risk of failure of justice. In particular, while we are anxious to facilitate the service of summons and the proof of such service, we are unwilling to give any presumption of law against an absent defendant except on adequate proof of such service.

84. We have, however, with a view to avoiding, as far as possible, the complication and delay which arise from questions as to the landlord's title being raised in rent-suits, made an im-

portant amendment in the section (164) which requires a tenant, admitting that rent is due from him, but pleading that it is due not to the plaintiff but to a third person, to pay the amount into Court. Our object is to force the issue of disputed title to be raised separately and independently of the rent suit, and we have therefore provided that the Court shall, on the money being paid in, cause notice of the payment to be served on the third person, and unless he, within three months, institutes a separate suit against the plaintiff and obtains an order restraining the payment of the money, it will be paid out to the plaintiff on his application.

85. We have further added a section (165) providing that when a defendant in a rent suit admits that money is due from him to the plaintiff but disputes the amount, the Court shall, as a rule, require him to pay the amount admitted into Court.

86. We have provided (section 173) that when a plaintiff institutes a suit for the ejectment of a trespasser he may claim, as alternative relief, that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court.

87. Section 207 of the original Bill provided that a landlord or a tenant might institute a suit for the determination of the nature and incidents of the tenancy. We have (section 174) substituted the simpler and cheaper procedure of an application, and have empowered the Court, to which the application is made, to direct that a Revenue-officer shall make a local enquiry into any matter it thinks fit.

CHAPTER XVI.

SUMMARY SALE FOR ARREARS.

88. We have, in accordance with what we understand to be the desire of the landlords, maintained the provisions of the law relating to the sale of patní tenures substantially intact, amending them only in matters of form and minor detail. The provisions so amended have now been transferred from the Schedules to the body of the Bill, and form the first division of this chapter.

89. The second division of it consists of a single section enacting that, if provision is made by law for the registration in a public register of any tenures other than patní tenures, the provisions of the chapter shall, subject to such modifications as the Local Government may by rule prescribe, apply to those tenures.

CHAPTER XVII.

CONTRACT AND CUSTOM.

90. The important question as to the extent to which freedom of contract between landlord and tenant should be restricted has been disposed of, in so far as a few particular points are concerned, in the sections of the Bill relating to those points (see *e. g.* paras. 29, 30 and 46 *supra* on the subject of contracts fixing rent). But we have thought it convenient to collect in one section at the opening of this chapter most of the restrictions which, in the opinion of the majority of us, it is necessary to place on the power to contract out of the provisions of the law.

The matters which are thus placed beyond the reach of contract will be seen to be as follows:—

(*a*) The acquisition of the status of settled-raiyat and of the occupancy-right (sections 24, 25 and 26).

(*b*) The incidents of the occupancy-right specified in section 31.

(*c*) The occupancy-raiyat's right to demand a reduction of rent under section 51.

(*d*) The right of either landlord or tenant to demand a commutation of a produce-rent under section 53.

(*e*) The protection afforded by the Bill to a non-occupancy-raiyat or an under-raiyat from ejectment except on specified grounds (sections 58, 59, 60 and 63).

(*f*) The right of a tenant to a reduction of rent on account of a diminution of the area of his holding (section 66).

(*g*) The right of a raiyat to make improvements and claim compensation for them (sections 88, 89, 90 and 93).

(*h*) The protection afforded to all tenants against ejectment except in execution of a decree (section 98).

91. With a view to encouraging permanent mukarrarí leases we have inserted in this chapter a new section (211) providing that nothing in the Act shall be deemed to prevent a landlord in a permanently-settled estate from granting a permanent mukarrarí lease on any terms agreed on between him and his tenant.

92. It has been admitted throughout our discussions that lands held on reclamation-lease, chur or dearah lands, and lands taken under the customs known as *utbundi* and *hal-hasili* must be treated exceptionally, and the three following sections of this chapter are intended to make such special provision regarding them as appears to us to be necessary.

93. Section 212 provides that nothing in the Act shall affect any contract for the reclamation of waste-land.

94. Section 213 provides that a raiyat holding chur or dearah land shall not acquire a right of occupancy in the land until he has held it for twelve continuous years, and that until he acquires the right of occupancy he shall be liable to pay whatever rent is agreed on between him and his landlord, but that the Court may upon the application of either party declare that the land has ceased to be chur or dearah land, and thereupon the provisions of the Act shall apply to it.

95. Lastly, section 214 enacts that nothing in the Act shall affect the conditions, customary or otherwise, under which land is held on either of the systems known as the *utbundi* and *hal-hasili* systems.

96. As already stated (paragraph 4) we have omitted Chapter VII of the original Bill, which was intended to provide for the case of a raiyat holding his homestead otherwise than as a part of his holding as a raiyat. As, however, the absence of any mention of such tenancies in the Bill might give rise to misapprehension, we have thought it well to insert a section (216) expressly providing that their incidents will be regulated by local custom.

CHAPTER XVIII.

LIMITATION.

97. We consider that a moderately short period of limitation should be fixed for the recovery by an occupancy-raiyat of land comprised in his holding, and, following the precedent presented by section 81 of the Central Provinces Tenancy Act, 1881, we have fixed the period at two years from the date on which he is ejected, adding a proviso to guard against the revival of causes of action already barred.

CHAPTER XIX.

SUPPLEMENTAL.

98. We have somewhat amplified the provisions of section 221, which empowers a landlord to act through his agent, and in order to remove a misapprehension which, notwithstanding the definition of "landlord" contained in the Bill, we have found to exist in some quarters, we have added a section (222). to make it clear that, when two or more persons are joint landlords, they must act together or through an agent appointed by them jointly.

99. In the course of our discussions various points have been raised with which we felt that we were unable to deal adequately without further information than that contained in the papers before us. On some of these points we should be glad to receive the advice both of the Local Government and of the High Court.

The principal questions are as follows:—

(1) Whether, with reference especially to landlord's improvements, it is desirable to empower Revenue-officers to arrange for the cutting of irrigation channels, the distribution of water and the payment of compensation, and, if so, what form such provisions should take.

(2) What modifications it may be desirable to make, whether by rules or otherwise, in the Code of Civil Procedure, with a view to expedite the trial of rent suits; and in particular whether it is desirable that landlords should be empowered to institute, by means of a single plaint, suits for arrears against a number of raiyats holding independently of each other.

(3) Whether any provision can safely be enacted restricting the right to claim a re-trial when a decree has been given *ex parte*. We are aware that a judge is in no way bound to admit a re-trial unless he is satisfied that the summons failed to reach the defendant or that he was prevented by some sufficient cause from appearing; but the representations made to us are to the effect that the due service of the summons is systematically denied, and that the Courts too readily accept the plea, thus encouraging tactics the only object of which is to interpose delay and to involve the landlord in unnecessary expense in recovering his dues.

The proposal before us was that *ex parte* suits should not be re-tried except upon the defendant depositing the amount decreed, but we were unwilling to adopt this proposal on the information before us and desired that it should be referred for the consideration of the Hon'ble Judges of the High Court.

(4) A somewhat similar suggestion which has been made to us is that a defendant in a suit for arrears should not be allowed to appeal from a decree passed against him except on depositing the amount of the decree. On this suggestion, too, we should be glad to have the opinion of the Judges.

(5) A further point, and on this we desire to have the opinion of the Local Government, is whether the summary sale procedure can be applied to those independent taluqs, the revenue of which was settled direct with Government, though the holders pay it through the zamíndár. These tenures apparently find no place in the Government registers, and it was proposed that the modified *patní* procedure should be applied to them.

(6) A similar proposal was made to render this procedure applicable to the recovery of arrears of Road Cess and Public Works Cess from rent-free tenure-holders. We decided to refer this point also to the Local Government.

(7) The necessity for further information respecting the conditions on which bastu or homestead land is held has already been noticed (*supra* para. 4).

(8) We are also anxious to be informed if the saving of customary conditions which we have specifically applied to *utbandi* and *hal-hasili* tenures should be extended to similar tenures under other names, and also if any special saving is necessary in regard to the special tenures under which land is held in the Chittagong division.

(9) Again, we desire to be informed whether it would be possible to specify, for the purpose of exemption from the pre-emption sections, any such transferable occupancy-rights as those in guzashta and gora holdings.

(10) Finally, we desire that the Government of Bengal may be consulted as to the possibility of improving the accuracy of the price-lists which have been published during the past twelve years, and the probable effect of basing a system of enhancement of rent mainly on these prices.

100. The publication ordered by the Council has been made, as follows:—

In English.

Gazette.	*Date.*
Gazette of India	3rd, 10th and 17th March, 1883.
Calcutta Gazette	7th, 14th and 21st March, 1883.

In the Vernaculars.

Province.	*Language.*	*Date.*
Benga	Bengalí	24th April, 1883.
	Hindí	4th May, 1883.
	Uriya	17th May, 1883.

101. As we have already intimated, we are of opinion that the Bill as now amended should be republished.

S. C. BAYLEY.
RIVERS THOMPSON.
C. P. ILBERT.
G. H. P. EVANS.
J. W. QUINTON.
T. M. GIBBON.*
AMÍR ALÍ.
W. W. HUNTER.
H. REYNOLDS.*

I sign this report as a fair statement of the results of the deliberations of the Committee, but as I am opposed to the leading principles of the Bill and to many details, I record a separate dissent.

KRISTODÁS PÁL.

I am against the principles of the Bill *in toto*. I sign this report subject to the conditions mentioned by Hon'ble Rai Kristodás Pál, and only because I believe I am bound to sign it according to the rules.

DARBHANGÁ.†

The 14th March, 1884.

* Subject to reservation on some points.

† The Hon'ble the Mahárájá of Darbhangá has intimated his intention to send a minute of dissent, but as it has not been received in time for publication with this Report, it will be published separately.

SCHEDULE.

Office Memorandum by Officiating Under-Secretary to the Government of India, Revenue and Agricultural Department, No. 484-116 R., dated 1st May, 1883, and enclosures [Papers No. 1].
From Under-Secretary to Government, Bengal, No. 1827-648 L. R., dated 13th July, 1883, and enclosures [Papers No. 2].
From Officiating Secretary to Government, Bengal, No. 1876-669 L. R., dated 18th July, 1883, and enclosures [Papers No. 3].
From Officiating Secretary to Government, Bengal, No. 1928-694 L. R., dated 24th July, 1883, and enclosures [Papers No. 4].
From Officiating Secretary to Government, Bengal, No. 2179-787 L. R., dated 13th August, 1883, and enclosures [Papers No. 5].
From Under-Secretary to Government, Bengal, No. 586 T. R., dated 24th August, 1883, and enclosures [Papers No. 6].
From Under-Secretary to Government, Bengal, No. 686 T. R., dated 3rd September, 1883, and enclosures [Papers No. 7].
Notes by Hon'ble T. M. Gibbon [Papers No. 8].
Memorial of Landholders of Eastern Bengal, dated 14th September, 1883, with notes [Paper No. 9].
From Rájá Promatha Natha Bahádúr of Dighapatia, No. 21, dated 20th September, 1883 [Paper No. 10].
From Under-Secretary to Government, Bengal, No. 822 T. R., dated 15th September, 1883, and enclosures [Papers No. 11].
From Officiating Secretary to Government, Bengal, No. 972 T. R., dated 27th September, 1883 [Paper No. 12].
From Under-Secretary to Government, Bengal, No. 1021 T. R., dated 1st October, 1883, and enclosure [Papers No. 13].
From Under-Secretary to Government, Bengal, No. 1083 T. R., dated 7th October, 1883, and enclosures [Papers No. 14].
Office Memorandum by Officiating Under-Secretary to Government of India, Revenue and Agricultural Department, No. 964 R., dated 10th October, 1883, and enclosures [Papers No. 15].
From Under-Secretary to Government, Bengal, No. 1117 T. R., dated 10th October, 1883, and enclosures [Papers No. 16].
From Under-Secretary to Government, Bengal, No. 1160 T. R., dated 13th October, 1883, and enclosures [Papers No. 17].
From Bábú Kishori Lall Sarkár, Calcutta, dated 13th October, 1883 [Paper No. 18].
From Under-Secretary to Government, Bengal, No. 1299 T. R. dated 27th October, 1883, and enclosures [Papers No. 19].
From Bábú Kishori Lall Sarkár, Calcutta, dated 3rd November, 1883 [Paper No. 20].
From Under-Secretary to Government, Bengal, No. 2321-837 L. R., dated 10th November, 1883, and enclosure [Papers No. 21].
From Under-Secretary to Government, Bengal, No. 2389-861 L. R., dated 16th November, 1883, and enclosure [Paper No. 22].
From Under-Secretary to Government, Bengal, No. 2395-863 L. R, dated 17th November, 1883, and enclosure [Papers No. 23].
Memorial from the Committee of the Orissa People's Association, dated 1st November, 1883 [Paper No. 24].
From Bábú Rájkissor Mukárjí, Uttarpára, dated 10th November, 1883, and enclosure [Papers No. 25].
From Honorary Secretary, Tirhút Landholders Association, No. 11, dated 13th November, 1883, and enclosure [Papers No. 26].
From Bábú Kishori Lall Sarkár, dated 17th November, 1883 [Paper No. 27].
From Secretary, Central Committee of Landholders of Bengal and Bihár, No. 118, dated 27th November, 1883, and enclosures [Papers No. 28].
Endorsement by Officiating Under-Secretary to Government of India, Revenue and Agricultural Department No. 1064, dated 5th December, 1883, and enclosures [Papers No. 29].
Memorial of certain Zamíndárs, Taluqdárs and Intermediate Landholders of Sherpur, Maimansingh district, dated 16th November, 1883 [Paper No. 30].
From Under-Secretary to Government, Bengal, No. 2670 954, dated 12th December, 1883, and enclosures [Papers No. 31].
From Secretary, British Indian Association, No. 123, dated 18th December, 1883, and enclosure [Papers No. 32].
From Secretary, Landholders Committee, Rájsháhi, dated December, 1883, and enclosure [Papers No. 33].
Endorsement by Assistant Secretary to Government, Bengal, Legislative Department, No. 2, dated 5th January, 1884, and enclosures [Papers No. 34].
From Under-Secretary to Government, Bengal, No. 2789-1001 L. R., dated 19th December, 1883, and enclosures [Papers No. 35].
From Under-Secretary to Government, Bengal, No. 182-45 L. R, dated 16th January, 1884, and enclosure [Papers No. 36].
Resolutions passed at Meeting of the Talanda Branch Indian Association, held on 16th January, 1884 [Paper No. 37].
From Secretary, Bhágulpur Landholders Association, No. 106, dated 9th January, 1884, and enclosures [Papers No. 38].
From Under-Secretary to Government, Bengal, No. 227-68 L. R., dated 21st January, 1884, and enclosure [Papers No. 39].
From Officiating Secretary to Government, Bengal, No. 540-231 L. R., dated 9th February, 1884, and enclosure [Papers No. 40].
From Honorary Secretary, Tirhút Landholders Association, No. 5, dated 9th February, 1884, and enclosure [Papers No. 41].

No. II.

THE BENGAL TENANCY BILL, 1884.

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Bengal Tenancy Bill.

(Chapter I.—Preliminary. Secs. 1—3.)

No. II.

Explanation of abbreviations in margin.

D. means Mr. Field's Digest.

C. B., the Bill prepared by the Commission.

B. B. the Bill submitted by the Bengal Government with letter No. 849, dated 27th July, 1881.

SECTION means the corresponding section of the Bill as introduced in March, 1883.

A Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the Territories under the Administration of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

[C. B., s. 1. B. B., s. 1.] Section 1 (1). Short title. **1.** (*1*) This Act may be called the Bengal Tenancy Act, 1884.

Section 1 (2). Commencement. (*2*) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local Gazette, appoint in this behalf.

[C. B., s. 1. B. B., s. 1.] Section 1 (3). Local extent. (*3*) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third part of the First Schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor General in Council, by notification in the local Gazette, extend the whole or any part of this Act to the Division of Orissa.

[C. B., s. 2. B. B., s. 2. Section 2. Repeal. **2.** (*1*) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation.

(*2*) When this Act is extended to the Division of Orissa, such of those enactments as are in force in that Division, or, where a part only of this Act is so extended, so much of them as is inconsistent with that part, shall be repealed in that Division.

(*3*) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

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

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

[D. § 1. C. B., s. 3. B. B., s. 3.] Section 3 (1). (*1*) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district:

Provided that the registration of a tenure under section 3(*2*) (*c*) of the Land Registration Act, 1876, shall not constitute it an estate within the meaning of this definition. VI of 1876. (B.C.)

[D. § 1. C. B., s. 3. B. B., s. 3.] Section 3 (2). (*2*) "Proprietor" means a person or a number of persons owning an estate.

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

Section 3 (4). (*4*) "Landlord" means a person or a number of persons immediately under whom a tenant holds.

[D. § 1. C. B., s. 3. B. B., s. 3. See s. 227.] Section 3 (5). (*5*) "Rent" means whatever is payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant.

Section 3 (6). (*6*) "Pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery."

Section 3 (7). (*7*) "Holding" means a parcel or parcels of land held by a tenant of a landlord under one lease or one set of conditions.

Section 3 (8). (*8*) "Agricultural year" means, where the Bengalí year prevails, the year commencing on the first day of Bysák, where the Faslí or Amlí year prevails, the year commencing on the first day of Asin, and, where any other year prevails for agricultural purposes, that year.

[D. § 20 & 37. C. B., ss. 6 & 16. B. B., ss. 6 & 15.] Section 3 (9). (*9*) "Permanent Settlement" means the Permanent Settlement of Bengal, Bihár and Orissa, made in the year 1793.

Section 3 (10). (*10*) "Transfer" includes sale, whether voluntary or in execution of a decree, and mortgage and gift.

Section 3 (11). (*11*) "Succession" includes both intestate and testamentary succession.

[C. B., s. 1. B. B., s. 3.] Section 3 (12). (*12*) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to.

Section 3 (13). (*13*) "Prescribed" means prescribed by the Local Government by notification in the official Gazette.

Section 3 (14). (*14*) "Collector" means the Collector of a District or any other officer appointed by the Local Government to discharge the functions of a Collector under this Act.

Bengal Tenancy Bill.

(Chapter II.—Classes of Tenants. Secs. 4 & 5.)

(Chapter III.—Tenure-holders. Secs. 6 & 7.)

Section 3 (22). (*15*) "Revenue-officer" in any provision of this Act means such officer as the Local Government may appoint to discharge the functions of a Revenue-officer under that provision.

[D., § 26. C. B., ss. 14 & 15. B. B., ss. 13 & 14.] Section 36. (*16*) "Patní tenure" means a tenure of the kind described in Schedule II annexed to this Act, and includes the darpatní and other similar tenures referred to in that schedule.

CHAPTER II.

CLASSES OF TENANTS.

Classes of tenants. **4.** There shall be, for the purposes of this Act, the following classes of tenants, namely:—

(1) Tenure-holders, including under-tenure-holders,

(2) Raiyats, and

Section 3 (6). (3) Under-raiyats, that is to say, tenants holding whether immediately or mediately under raiyats;

and the following classes of raiyats, namely:—

(*a*) raiyats holding at fixed rates, which expression includes raiyats holding either at a fixed rent or at a fixed rate of rent,

(*b*) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(*c*) non-occupancy raiyats, that is to say, raiyats not having such a right of occupancy.

Section 3 (4). Meaning of tenure-holder and raiyat. **5.** (*1*) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder the right to collect rents, and includes also the successors in interest of persons who have acquired such a right and the persons who are to be deemed tenure-holders under section 37.

[D., § 1. C. B., s. 3. B. B., s. 3. ("raiyat" and "land.")] Section 3 (5). (*2*) "Raiyat" means primarily a person who has acquired land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and, subject to section 37, includes also the successors in interest of persons who have so acquired land.

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

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

(*a*) local custom;

(*b*) the provisions of section 37, with respect to raiyats who sub-let more than half their holdings; and

(*c*) the nature of the right of tenancy as originally acquired, that is to say, whether it was a right to collect rents or a right to cultivate land.

(*5*) Where the area of a holding exceeds 100 standard bighás, and the whole or part of it is sub-let, the tenant shall be presumed to be a tenure-holder until the contrary is shewn.

CHAPTER III.

TENURE-HOLDERS.

Enhancement of rent.

Enhancement of rent. [D., s. 19. C. B., s. 7. B. B., s. 7.] Section 18. **6.** (*1*) Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

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

(*b*) that the tenure-holder, by receiving reductions of his rent, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

(*2*) A reduction of rent granted to a tenure-holder on account of diluvion, or for land taken under the provisions of any enactment for the time being in force for the acquisition of land for public purposes or companies shall not be deemed a reduction within the meaning of this section.

[D., § 23. C. B., ss. 9 & 12. B. B., ss. 9 & 10.] Section 21. **7.** (*1*) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

Limits of enhancement of rent of tenures.

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

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

(*a*) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest;

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

(*c*) the cost and risks of collection.

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

[C.B., s. 10(*a*). B.B., s. 11(*a*).] Section 22.

8. Where the rent of a tenure-holder is liable to enhancement, the enhanced rent fixed under the last foregoing section shall not be more than double the rent previously payable.

Enhanced rent not to be more than double the previous rent.

[C.B., s. 10(*a*). B.B., s. 11(*b*).] Section 23.

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

Power to order gradual enhancement.

[C.B., s. 10(*b*). B.B., s. 11(*c*).] Section 24.

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

Rent once enhanced may not be altered for ten years.

Other incidents of tenures.

Other incidents of tenures.

[C. B., s. 13. B. B., ss. 13 & 17.] Section 25.

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

Transfer and transmission of permanent tenures.

Section 26.

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

Permanent tenure-holder not liable to ejectment.

Patní tenures.

Patni tenures.

[D., § 26. C. B., s. 14. B. B., s. 13.] Section 37 (2).

13. The holder of a patní tenure may, subject to the provisions of this Act, let the land comprised in his tenure or any part thereof.

Power of patnídar to sub-let.

[D., § 27. C. B., s 53 (*a*). B. B., s. 45 (*a*).] Section 38.

14. (*1*) When a patní tenure is transferred, whether voluntarily, or by sale in execution of a decree, or by summary sale under this Act, the landlord may require the transferee to furnish substantial security to the amount of one half-year's rent of the tenure, for the payment of the rent and the fulfilment of the conditions of the tenure.

Right of landlord of patní tenure to demand security from transferees.

[D., § 29. C. B., s. 53 (*b*). B. B., s. 45 (*b*).] Section 40 (*1*).

(*2*) In the case of a transfer by sale in execution of a decree, or by summary sale, if security is demanded by the landlord from the purchaser under this section and is not furnished within one month from the date on which it is so demanded, the landlord may attach and hold possession of the tenure to the exclusion of the transferee until the security is furnished.

Section 40 (*2*).

(*3*) While an attachment under this section continues, the landlord may collect the rents from the under-tenure-holders or raiyats, and, after deducting therefrom the cost of the attachment, the expenses of collection and the rent due to himself, he shall hold the balance in trust for the purchaser.

(*4*) If the rents so collected are not sufficient to discharge the cost of the attachment, the expenses of collection, and the rent due to the landlord, the purchaser shall be liable for the deficiency, and the landlord may proceed against him for the recovery of the same. Section 40 (*3*).

(*5*) If the security tendered under this section by any transferee is rejected by the landlord, the transferee may, within three months from the date of the rejection, apply to the Civil Court for an order directing the landlord to receive the security, and the Court, if satisfied of the sufficiency of the security tendered, may make such order, or, if not so satisfied, may make an order rejecting the application. [D., § 28. C. B., s. 53(*b*). B. B., s. 45 (*c*).] Section 41 (*1*).

(*6*) No appeal shall lie from any order under this section. Section 41 (*2*).

Registration.

Registration.

15. (*1*) When a transfer of a permanent tenure (other than a transfer by sale in execution of a decree or by summary sale under this Act) or a succession to such a tenure, takes place, the landlord shall, subject, in the case of a patní tenure, to the provisions of the last foregoing section, register the same on the joint application of the transferor and transferee, or on the application of the person succeeding, as the case may be, and on payment by the applicant of the fee next hereinafter prescribed : [D., § 25. C. B., s. 46. B. B., s. 37.] Section 27 (*1*).

Registration of voluntary transfers and successions.

Provided that a landlord may, if he thinks fit, refuse to register a transfer of a tenure if any arrear of rent is due thereon.

(*2*) The fee payable on an application under this section shall be as follows, namely :— [D., s. 27. C. B., ss. 47, 49. B. B., ss 39, 41.] Section 27 (*2*)

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

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

(*3*) If a landlord refuses to comply with any application under this section, he shall deliver to the applicant a statement in writing of the reasons for his refusal, and if he fails to do so the applicant may institute a suit to recover from him such sum by way of penalty not exceeding one hundred rupees as the Court thinks fit. Section 27 (*3*).

16. (*1*) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure, require the purchaser to pay [C.B., ss. 47, 48 (*c*). B. B., ss. 39, 40 (*c*).] Section 29 (*1*). XIV of 1882.

Registration of transfer by sale in execution of decree other than decree for rent.

into Court the registration fee prescribed by the last foregoing section and such further fee for service of notice of the sale on the landlord as may be prescribed by the rules under section 22.

Section 29 (*2*). (*2*) When the sale has been confirmed, the Court shall forthwith cause to be served on the landlord a notice of the sale, requiring him to register the same, and informing him that the registration-fee has been received and will be paid to him on demand when the registration has been effected ; and the landlord shall, in the absence of sufficient cause, forthwith comply with the requisition.

Section 30.

17. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, or by summary sale under this Act, the landlord shall register the transfer without any application or requisition being made to him in this behalf, and without the payment of any fee.

Registration of transfer by sale in execution of decree for rent or by summary sale.

[D. s. 10. C B., ss. 46. 48 (*a*) 49. B.B., ss. 37, 40 (*a*) and 41.] Section 31.

18. (*1*) When a transfer of a permanent tenure (not being a transfer by sale in execution of a decree for arrears of rent or by summary sale under this Act) has taken place, the landlord may, until the transfer has been registered under this chapter, hold the transferor and transferee jointly and severally liable for arrears of rent accruing after the transfer.

Effect of omission to register.

(*2*) A person becoming entitled to a permanent tenure by transfer or succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the transfer or succession has been registered under this chapter, or a notice thereof has been served on the landlord in manner directed by rules under section 22.

C.B., s. 35. B.B., s. 44.] Section 32 (*1*).

19. (*1*) If a landlord refuses or neglects for a period of one month to register a transfer or succession which he is bound to register under the foregoing sections, the transferor or transferee, or, as the case may be, the person succeeding, may apply to the Civil Court to compel such registration.

Application to Court to compel landlord to register.

Section (32) 2.

(*2*) The Court thereupon may issue a notice to the landlord, and, when the application is made by one party to a transfer, also to the other party or parties to the transfer, requiring him or them, as the case may be, to show cause, at a time and place therein specified, why the transfer or succession should not be registered.

Section 32 (*3*).

(*3*) If sufficient cause as aforesaid is not so shown, the Court may make an order directing the landlord to register the transfer or succession, and the making of such an order shall have the same effect as if the transfer or succession had been registered.

(*4*) If sufficient cause as aforesaid is shown, the Court may refuse to make an order, or may make such order as in its opinion will meet the circumstances of the case.

20. (*1*) When a transfer (other than a transfer by sale in execution of a decree or by summary sale under this Act) or a succession, registrable under the foregoing sections, has taken place, and no application is made for its registration within the six months following the date on which it has taken place, the landlord may apply to the Civil Court to authorize the registration of the transfer or succession and to compel the parties to the transfer, or the person succeeding, as the case may be, to pay the fee mentioned in section 15. [C.B., ss. 50 and 51. B.B., ss. 42 and 43.] Section 33 (*1*).

Application by landlord to compel registration.

(*2*) The Court may thereupon issue a notice, calling on the parties to the transfer, or the person succeeding, as the case may be, to show cause, at a time and place specified in the notice, why the registration should not be made and why they or he should not pay the fee. Section 33 (*2*).

(*3*) If sufficient cause as aforesaid is not so shown, the Court may make an order authorising the landlord to register the transfer or succession, and directing the transferee, or the person succeeding, as the case may be, to pay the fee. The making of such an order shall have the same effect as if the transfer or succession had been registered, and the order so made shall, so far as it directs the recovery of the fee, have the force of a decree in a suit. Section 33 (*3*).

(*4*) If sufficient cause as aforesaid is so shown, the Court may refuse to make an order, or may make such order as in its opinion will meet the circumstances of the case.

21. When a transfer of, or a succession to, a tenure has been registered under the foregoing sections, every person to or from whom the tenure or any share thereof is transferred, or (as the case may be) every person succeeding to the tenure, shall be entitled to receive from the landlord as many copies as he may from time to time demand of the entry in the register relating to the tenure, certified by the landlord as a true copy : provided that for every copy so received he shall pay to the landlord such fee, not less than *one anna* or more than *one rupee*, as the Local Government may from time to time fix in this behalf. [C. B., s. 52. B. B., s. 46.] Section 34.

Landlord to give copies of entries in the register.

22. (*1*) The Local Government may, from time to time, by rules consistent with this Act and published in the official Gazette, prescribe forms for the registers to be maintained under the foregoing sections, and generally the procedure to be follo ved in regard to registration. [C. B., s. 48. B. B., s. 44.] Section 35 (*1*).

Power to make rules regarding registration.

(*2*) In making any rule under sub-section (*1*) the Local Government may provide that any breach thereof shall be punishable with fine which may extend to fifty rupees. Section 35 (*2*).

Bengal Tenancy Bill.

(Chapter IV.—Raiyats holding at fixed rates. Sec. 23.)

(Chapter V.—Occupancy-raiyats. Secs. 24—30.)

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

Incidents of holding at fixed rates.

23. A raiyat holding at a fixed rent or rate of rent—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as a tenure-holder, and

C. B., s. 13. [B. B., ss. 12 & 17.] Section 26.

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

CHAPTER V.

OCCUPANCY-RAIYATS.

General.

General. [B. B., s. 19 (1) & Expl. IV (e), proviso.] Section 44.

Continuance of existing occupancy-rights.

24. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land, shall, when this Act comes into force, have a right of occupancy in that land.

Section 47.

Settled raiyats to have occupancy-rights.

25. (*1*) Every settled raiyat of a village or estate shall have a right of occupancy in all land held by him as a raiyat in that village or estate.

Section 47.

(*2*) Every person who, being a settled raiyat of a village or estate, held land as a raiyat in that village or estate at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force.

Section 45 (*1*).

Definition of settled raiyat.

26. (*1*) Every person who for a period of twelve years whether wholly or partly before or after the commencement of this Act has continuously held as a raiyat land situate in any village or estate, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village or estate.

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

Section 45 (*1*).

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

Section 45 (*2*).

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

Section 45 (*3*).

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

Section 46.

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

(*7*) If a raiyat recovers possession of land under section 96, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

Definition of village and estate.

[B. B., s. 19, Expl. II.] Section 43.

27. For the purpose of the foregoing sections of this chapter—

(*a*) Village means an area included in a village map of the revenue-survey within the same exterior boundary, including such outlying portions (if any) as appear from the map to belong to the village, or, where no such maps have been prepared, such area as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested.

(*b*) Where two or more estates have been created by one or more partitions taking place, whether before or after the commencement of this Act, but since *the first day of January, 1853*, the area comprised in the parent estate of which they would have formed part if no such partition had taken place shall be deemed to be a single estate.

Section 56.

Effect of acquisition of occupancy-right by landlord.

28. If the landlord of a raiyat having a right of occupancy acquires, by purchase or otherwise, the interest of the raiyat, the occupancy-right shall cease to exist, but nothing in this section shall prejudicially affect the rights of any third person.

Special provisions as to joint owners and farmers.

29. (*1*) A person holding land as a raiyat shall not be prevented from acquiring an occupancy-right in the land by reason only that he is jointly interested in the land as proprietor or tenure-holder.

[D., § 40, Expls. I & V. C. B., s. 19, Expl. IV. B. B., s. 19, Expl. IV (*d*).] Section 47, proviso.

(*2*) A person holding as an ijárádár or farmer of rents shall not by such holding acquire a right of occupancy in the land, but if a person acquires a right of occupancy in land he shall not lose it by subsequently holding the land in farm.

Saving as to khámár land.

30. Nothing in this Chapter shall confer a right of occupancy in a proprietor's private lands known in Bengal as khámár, nij or nij-jot, and in Bihár as zírat, nij, sír or kamat, where any such land is held under a lease for a term of years or under a lease from year to year.

[D., § 40, Expl. V. C. B., s. 19, Expl. 3 (*d*), Expl. (4) (*g*) B. B., s. 19, Expl. III (*b*), Expl. IV (*f*).] Section 49.

Bengal Tenancy Bill.

(Chapter V.—Occupancy-raiyats. Secs. 31—35.)

Incidents of occupancy-right.

31. Where a raiyat has a right of occupancy in respect of any land, the following provisions shall apply, namely:—

[B. B., s 69.] Section 50, cl. (*a*).

(*a*) He may use the land in any manner which does not render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

[C. B., s. 77, B. B., s 69.] Section 50, cl. (*b*).

(*b*) He may make improvements on the land as by this Act provided.

[D., § 42. B. B., s. 21. (*d*).] Section 50, cl. (*c*).

(*c*) He shall pay rent at fair and equitable rates.

[C. B., s. 20 (*e*). B. B., ss. 21 (*e*), 31, 69 (*a*).] Section 50, cl. (*d*).

(*d*) He shall not be ejected by his landlord from the land, except in execution of a decree for ejectment passed on the ground—

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

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

(*e*) He may surrender his holding in accordance with this Act.

[C. B., s. 20 (*a*), (*b*) and (*d*). B. B., s. 21 (*a*) and (*b*).] Section 5 , cl. (*f*) .

(*f*) His right of occupancy in the land shall, subject to the rights reserved to the landlord by this Act, be capable of being transferred and bequeathed by will in the same manner and to the same extent as other immoveable property.

[D. § 40, note 7. B. B., s. 71.] Section 50, cl (*e*).

(*g*) He may, subject to the provisions of this Act, sub-let his land or any part thereof.

[D., § 41, note 9. C. B., s. 20 (*c*). B. B., s. 21. (*c*).] Section 50, cl. (*g*).

(*h*) His right of occupancy in the land shall, if he dies intestate in respect of it, descend in the same manner as any other immoveable property: provided that in any case in which, under the law of inheritance to which he is subject, his other property goes to the Crown, his right of occupancy shall be extinguished.

Restrictions on transfer.

Restrictions on transfer.

32. (*1*) The right of a raiyat to sell his occupancy-right shall be subject to a right of pre-emption on the part of his landlord.

Landlord's right of pre-emption on voluntary sale of occupancy-right.

Section 51 (*1*).

(*2*) For the purpose of enabling the landlord to exercise his right of pre-emption, the raiyat shall, if he intends to sell his occupancy-right to any person other than the landlord, file in the office of such Court or officer as the Local Government may appoint in this behalf, for service on the landlord, a written notice of his intention, stating the person to whom he intends to sell the right, the terms on which he intends to sell, and the incumbrances, if any, to which the right is subject, and shall defer proceeding with the sale until the expiration of six weeks from the date on which he files the notice.

Section 51 (*2*).

(*3*) The Court or officer in whose office the notice is filed shall forthwith cause it to be served on the landlord in such manner as the Local Government may, from time to time, by rule direct.

Section 51, (*3*).

(*4*) The landlord may, within the period of six weeks from the date of the notice being filed, claim to purchase the occupancy-right from the raiyat at such price as may be agreed on between them, or, if they cannot agree on a price, at such price as may be fixed by the Civil Court on an application made to it in this behalf by the landlord within the said period of six weeks; and if the landlord so claims and, within one month from the date on which a price is agreed on or fixed by the court, tenders that price to the raiyat, the raiyat shall either abstain from selling the land, or sell it to the landlord at that price.

Section 51, (*4*).

(*5*) If a raiyat sells his occupancy-right to any person other than the landlord without having filed the notice required by this section, or within the period of six weeks from the date of the notice being filed, the sale shall be void as against the landlord.

(*6*) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring a Civil Court to associate with itself for the purpose of fixing the price of an occupancy-right under this section such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

[Act XIV of 1882, s. 310.] Section 52.

Landlord's right of pre-emption on sale in execution.

33. Where an occupancy-right is sold in execution of a decree, and two or more persons, one of whom is the landlord, respectively advance the same sum at any bidding, the bidding shall be deemed to be the bidding of the landlord.

Section 53, (*1*).

Landlord's right to take the place of mortgagee on foreclosure.

34. (*1*) Where an occupancy-right has been mortgaged by the raiyat and an order absolute for foreclosure is applied for in respect of it under section 87 of the Transfer of Property Act, 1882, the Court shall, if it proposes to make the order, cause a notice of the application to be served on the landlord, and shall defer making the order for a period of one month from the service of the notice.

IV of 1882.

Section 53, (*2*).

(*2*) If the landlord within the said period of one month pays into Court the amount requisite to redeem the mortgage, the Court shall pay that amount to the plaintiff in the suit, declare the landlord entitled to stand in the place of the plaintiff, and pass an order absolute for foreclosure in favour of the landlord.

Section 53, (*3*).

(*3*) An order absolute passed under sub-section (2) shall have the same effect as if the landlord had been the mortgagee and the plaintiff in the suit.

Section 54, (*1*).

Restrictions on gifts of occupancy-right.

35. (*1*) A gift of an occupancy-right in land shall not be valid against the landlord unless it is made by a registered instrument.

Bengal Tenancy Bill.

(Chapter V.—Occupancy-raiyats. Secs. 36—42.)

(2) The registering officer shall not register any such instrument except on payment of the prescribed fee for service on the landlord of notice of the registration.

Section 54 (2). (3) When any such gift has been registered, the registering officer shall forthwith serve notice of the registration on the landlord.

(4) In the case of gifts made by Muhammadans, nothing in this section shall apply to a gift to a person within the prohibited degrees.

36. For the purpose of the last four foregoing sections the term landlord shall mean exclusively either—

Meaning of landlord for purposes of foregoing sections.

(*a*) a proprietor under whom immediately the land is held by the raiyat;

(*b*) a permanent tenure-holder under whom immediately the land is held by the raiyat; or

(*c*) any other tenure-holder under whom immediately the land is held by the raiyat, provided that such tenure-holder holds immediately under the proprietor or a permanent tenure-holder and is authorized in writing by the proprietor or permanent tenure-holder, as the case may be, to exercise the rights of a landlord for the purposes of the said sections.

Restrictions on sub-letting.

37. If the portion of his holding sub-let by an occupancy-raiyat exceeds more than half his holding, he shall, on being registered in a public register as a tenure-holder under any Act which may be passed for the registration of tenure-holders, be deemed to have become a tenure-holder within the meaning of this Act.

Conversion of sub-letting occupancy-raiyats into tenure-holders.

Provided as follows:—

(*a*) Nothing in this section shall apply to any person who is disabled from cultivation by age, sex, disease, accident or temporary absence from home on military or domestic service or a pilgrimage and who sub-lets his holding or any part thereof for a term not exceeding the duration of his disability.

(*b*) If a person is converted into a tenure-holder by virtue of this section his rent shall be liable to enhancement on the same terms and subject to the same conditions as if he were an occupancy-raiyat.

Explanation. A person who has been converted into a tenure-holder by virtue of this section does not by reason of the portion of his holding sub-let ceasing to be more than one-half the holding become again converted into a raiyat.

38. If an occupancy-raiyat sub-lets his holding or any part thereof, the sub-lease shall not be valid for a term exceeding seven years.

Restrictions on term of sub-lease.

Provided as follows:—

(*a*) Where a raiyat is disabled from cultivation by age, sex, disease, accident or temporary absence from his home on military or domestic service, or a pilgrimage, nothing in this section shall prevent him or be deemed to have prevented him from subletting his holding or any part thereof for a term not exceeding the duration of his disability;

(*b*) In the case of a sub-lease granted before the commencement of this Act the term of *seven* years shall for the purposes of this section be computed from the commencement of this Act.

Enhancement of rent.

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

Enhancement of rent.

Presumption as to fair and equitable rent.

[D., § 42, B. B., s. 21 (*d*).] Section 58.

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

[B. B., s. 21 (*d*).] Section 60.

Restriction on enhancement of money rents.

41. (*1*) The money rent of an occupancy-raiyat may be enhanced by registered contract, subject to the following conditions:—

Section 59 (*1*)

Enhancement of rent by registered contract.

(*a*) The rent must not be enhanced so as to exceed by more than four annas in the rupee the rent previously payable by the raiyat.

Section 59 (*2*).

(*b*) The contract must fix the rent for a term of at least seven years.

(*c*) If the enhanced rent exceeds, by more than two annas in the rupee, the previous rent, the contract must fix the rent for a term of at least fifteen years.

(*2*) The registering officer shall, before registering a contract under this section, ascertain that the contract is in accordance with the provisions of this Act, and that the raiyat is competent and willing to enter into it, and understands its nature.

Section 59 (*2*).

42. (*1*) Where land which has been previously held by a tenant at a money-rent is let to a settled raiyat of the village or estate in which it is situate, the raiyat shall not be bound to pay for it any rent higher than that which was paid for it by the previous tenant, except in pursuance of a registered contract for enhancement of the rent.

Section 61.

Enhancement on re-letting.

(*2*) The provisions of the last foregoing section shall apply to every such contract.

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

[D., § 43 (*1*) and (*2*). C. B., s. 22 (*1*), (*3*) and (*4*). B. B., s. 26 (*1*), (*3*) and (*4*).] Section 74.

Enhancement of rent by suit.

(*a*) That the rate of rent paid by the raiyat is below the prevailing rate payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity.

Bengal Tenancy Bill.

(Chapter V.—Occupancy-raiyats. Secs. 44—50.)

(*b*) That there has been a rise in the average prices of staple food crops in the locality or at the usual markets.

(*c*) That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(*d*) that the productive powers of the land held by the raiyat have been increased by fluvial action.

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

Rules as to enhancement on ground of prevailing rate.

(*a*) The enhanced rent shall not exceed the previous rent by more than eight annas in the rupee.

(*b*) If in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize by rule in that behalf.

XIV of 1882. Act XII of 1881, s. 20.

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

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

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

Rules as to enhancement on ground of rise in prices.

(*a*) The Court shall have regard to the lists of prices periodically published under the authority of the Local Government, and shall compare the average prices during the quinquennial period immediately preceding the institution of the suit with the average prices during such other quinquennial period as it may appear equitable and practicable to take for comparison.

(*b*) The Court shall not enhance the rent so that the enhanced rent exceeds the previous rent by more than four annas in the rupee.

(*c*) Subject as aforesaid, and subject also to section 48, the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last quinquennial period bear to the average prices during the previous quinquennial period taken for purposes of comparison.

46. Where an enhancement is claimed on the ground of a landlord's improvement—

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

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

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

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

(ii) the cost of the improvement;

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

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

(*c*) The Court may make its decree conditional, and subject to review and reconsideration in the event of the improvement not producing the estimated effect within a specified time.

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

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

(*a*) The Court shall not take into account any increase which is merely temporary or casual.

(*b*) The enhanced rent shall not exceed the previous rent by more than four annas in the rupee.

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

48. The Court shall not in any case decree any enhancement which appears under the circumstances of the case to be unfair or inequitable.

Enhancement to be fair and equitable.

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

[C.B., s. 23 (*d*). B. B. s. 24 (*d*).] Section 77.

Power to order progressive enhancement.

50. (*1*) A suit instituted for the enhancement of the rent of a holding on the ground that the rent paid is below the prevailing rate, or on the ground of an increase in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if within the said period of fifteen years the rent has been commuted under section 53 or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or any ground corresponding thereto or dismissing the suit on the merits.

[B. B., 143.] Section 78.

Limitation of right to bring successive enhancement-suits.

(*2*) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

XIV of 1882.

Bengal Tenancy Bill.

(Chapter V.—Occupancy-raiyats. Secs. 51—54.)

(Chapter VI.—Non-occupancy-raiyats. Secs. 55—57.)

Reduction of rent.

Reduction of rent. [D., § 47. C. B., s. 25 (2) and (3). B. B., s. 25 (2) & (3).] Section 79.

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

Reduction of rent.

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

(*b*) on the ground that there has been a fall in the average prices of staple food crops in the locality or at the usual markets.

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

Price-lists.

Price-lists. [C. B., 122. B.B, s. 145]. Section 83 (*1*).

52. (*1*) The Collector of every district shall prepare, at such time or times of the year as the local Government fixes in this behalf, lists of the market-prices at harvest-time of staple food crops grown in such local areas as the local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

Price-lists of staple crops.

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

Section 83 (*2*).

(*3*) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette.

Section 83 (*3*).

(*4*) Any such price-list so published shall, in any proceedings under this chapter, be conclusive evidence of the prices prevailing in the local area at the time to which it relates.

(*5*) The Collector shall, fifteen days before submitting a price-list to the Board of Revenue under this section, publish it within the local area to which it relates in the manner in which notices are usually published, and if any landlord or tenant of land within the local area within the said period of fifteen days presents to him in writing any objection to the list he shall submit the same to the Board of Revenue with the list.

Commutation.

Commutation. [C. B., s. 86. B. B. ss. 90 and 92.] Section 82 (*1*).

53. (*1*) Where an occupancy-raiyat pays rent for a holding in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

Commutation of rent payable in kind.

(*2*) The application may be made to the Collector, or sub-divisional officer, or to an officer making a settlement of rents under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.

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

(*4*) In making the determination the officer shall have regard to— Section 82 (*2*).

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

(*b*) the average value of the rent actually received by the landlord during the preceding ten years.

(*5*) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as other orders made by Revenue-officers.

(*6*) If the application is opposed, the officer may, for reasons recorded in writing, refuse to grant it.

Power to make rules.

Power to make rules. [C. B., ss. 120, 122 and 23(c), B. B. ss. 134, 145 and 24 (c).] Section 84.

54. The Local Government may, from time to time, subject to the control of the Governor General in Council, make rules—

Power to make rules.

(*a*) for the guidance of officers engaged in the preparation of price-lists under section 52;

(*b*) determining what food crops shall be deemed to be staple crops for the purposes of this chapter in any local area, and

(*c*) for the guidance of officers registering contracts under section 41 and section 42.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

Application of chapter. Section 88.

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

Initial rent of non-occupancy-raiyat. Section 89.

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

Conditions of enhancement of rent.

57. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 60.

Bengal Tenancy Bill.

(Chapter VI.—Non-occupancy-raiyats. Secs. 58—60.)

(Chapter VII.—Under-raiyats. Secs. 62—63.)

Grounds on which non-occupancy-raiyat may be ejected. [C. B., s. 79 (5).] B. B., ss. 26, 72 (5).] Section 90.

58. A non-occupancy raiyat shall be liable to ejectment on one or more of the following grounds, and not otherwise:—

(*a*) On the ground that he has failed to pay an arrear of rent.

(*b*) On the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

(*c*) Where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired.

(*d*) On the ground that he has refused to agree to pay a fair and equitable rent determined under section 60 or that the term for which he is entitled to hold at such a rent has expired.

Section 91

Conditions of ejectment on ground of expiration of lease.

59. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

Conditions of ejectment on ground of refusal to agree to enhancement.

60. (*1*) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat, unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

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

Sections 92 (*1*) and 93 (*1*).

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

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

Sections 92 (*2*) and 93 (*2*).

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

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

(*7*) If the raiyat agrees to pay the rent so determined he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy. Section 93 (*3*).

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

(*9*) In determining what rent is fair and equitable the Court shall have regard to the average rent payable by raiyats for land of a similar description and with like advantages in the vicinity, but shall not allow any enhancement exceeding eight annas per rupee of the previous rent.

(*10*) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed. Section 92 (*2*).

Explanation of "admitted to occupation".

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

CHAPTER VII.

UNDER-RAIYATS.

Limit of rent recoverable from under-raiyats.

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

(*a*) When the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and

(*b*) In any other case—twenty-five per cent.

Restriction on ejectment of under-raiyats.

63. An under-raiyat shall not be liable to be ejected by his landlord, except at the end of an agricultural year and after a written notice to quit has been served on him in the prescribed manner not less than six months before the expiration of that year.

5 *h*

Bengal Tenancy Bill.

(Chapter VIII.—General Provisions as to Rent. Secs. 64—67.)

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Rules and presumptions as to amount of rent.

Rules and presumptions as to amount of rent. [D. §§ 20 & 37. C. B., ss. 6 & 16. B. B., ss. 6 & 15.] Section 14.

64. (*1*) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the holding.

Rules and presumptions as to fixity of rent.

[D. §§ 21 & 38. C. B., ss. 6 & 17. B. B., ss. 6 & 16.] Section 15.

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

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

[D. § 88. C. B., s. 16. Expl. I. B. B., s. 15. Expl. I.] Section 16.

(*3*) When a raiyat has paid as rent a fixed share or the value of a fixed share of the produce of the land, the rent or rate of rent shall not be deemed to have been changed within the meaning of this section merely by reason of the amount paid having varied from year to year, or by reason of the rent having been commuted with the consent of both the raiyat and his landlord to a fixed money rent.

[D. § 27. C. B., s 16. Expl. II. B B., s. 15. Expl. II.] Section 17.

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

[D. § 20. C. B., s. 6. B. B., s. 6.] Section 19.

(*5*) Nothing in this section shall apply where the land is held for a term of years or the tenancy thereof is determinable at the will of the landlord.

Section 120.

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

Presumption as to amount of rent and conditions of holding.

Alteration of rent on alteration of area.

Alteration of rent in respect of alteration in area.

66. (*1*) Every tenant shall—

Alteration of rent on alteration of area. [D. §§ 19, 23 & 47. C. B., ss. 8 18, 22 (2) & 25 (1). B. B., ss. 8. 18, 23 (2) 25 (1).] Section 96.

(*a*) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, and

(*b*) be entitled to a reduction of rent in respect of any diminution of the area of his holding caused by diluvion or otherwise, unless it is proved that the land lost was added to the area of the holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(*2*) In determining the amount to be added to the rent the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure.

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

Payment of rent.

Payment of rent.

67. (*1*) A money-rent payable by a tenure-holder shall be paid in such instalments and on such dates as may have been agreed upon between the tenure-holder and his landlord; in the absence of agreement, in such instalments and on such dates as may be customary; and in the absence of any agreement or custom, in such instalments and on such dates as the Local Government may fix by rule for any local area.

Instalments of rent. [C. B., s. 55 (*a*). B. B., s. 47 (*a*).] Section 97.

(*2*) A money-rent payable by a raiyat or under-raiyat shall be paid in such instalments, representing respectively such proportions of the yearly rent, and on such dates, not being more than four in each year, as the Local Government may fix by rule for any local area, and, subject to any such rules, as may be fixed by agreement, or in the absence of agreement, by custom.

[C. B., s. 53 (*b*). B. B., s. (*b*).] Section 98.

(*3*) In making rules under this section the Local Government shall take into consideration the prevailing customs, the time of harvest, and the time at which land-revenue is payable.

[B. B., s. 47 (*b*).] Section 99(*1*).

(*4*) Every rule made under this section shall be published in manner prescribed not less than three months before the commencement of the agricultural year in which it is to take effect.

Section 99(*2*).

Bengal Tenancy Bill.

(Chapter VIII.—General Provisions as to Rent. Secs. 68—73.)

Time and place for payment of rent.

68. (*1*) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

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

Provided that the Local Government may make rules authorizing a tenant to pay his rent by postal money-order.

[D. s. 101, C. B. s. 56, B. B., s. 48.] Section 3(*12*).

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

Appropriation of payments.

69. (*1*) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

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

Receipts and accounts.

Receipts and accounts.

Tenant making payment to his landlord entitled to a receipt. [D, § 61. C. B., s. 57. B. B., s. 49 (*a*) and (*b*).] Section 100.

70. (*1*) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

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

(*3*) The receipt and counterfoil shall specify the several particulars shown in the form of receipt given in Schedule III to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

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

Tenant entitled to full discharge or statement of account at close of year. [C. B., s. 51 (*b*). B. B., s. 49 (*c*).] Section 101.

71. (*1*) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge, signed by the landlord.

(*2*) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year, a statement of account specifying the several particulars shown in the form of account given in Schedule III to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

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

Penalties and fine for withholding receipts and statements of accounts and failing to keep counterparts. [D. s. 65, C. B, s. 57 (*d*). B. B. ss. 49 (*d*) & 94.] Section 102.

72. (*1*) If a landlord refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 70 for any rent paid by the tenant, the tenant may, within six months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(*2*) If a landlord refuses or neglects to deliver to a tenant demanding the same the receipt in full discharge or the statement of account for any year prescribed in section 71, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(*3*) If a landlord fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

Deposit of rent.

Application to deposit rent in public office.

Deposit of rent. [D., § 99. C. B., ss. 58 & 59. B. B., ss. 50 & 51.] Section 103.

73. (*1*) In any of the following cases, namely:—

(*a*) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;

(*b*) when a tenant bound to pay money on account of rent has reason to believe that owing to a dispute or ill-feeling the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(*c*) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent in their behalf; or

(*d*) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent;

the tenant may present, to such officer as the Local Government from time to time appoints in this behalf for the local area in which the holding is situate, an application in writing for permission to deposit in his office the full amount of the money then due.

(*2*) The application shall contain a statement of the grounds on which it is made; shall, in case (*d*),

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(Chapter VIII.—General Provisions as to Rent. Secs. 74—79.)

state the name of the person to whom the rent was last paid, and of the person or persons now claiming it; shall be signed by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount, not less than eight annas, as the Local Government from time to time by rule directs.

[D. §§ 99 & 100. C. B., s. 60. B. B., s. 52.] Section 104.

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

74. (*1*) If it appears to the officer to whom an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, he shall receive the rent and give a receipt for it under his official seal.

(*2*) The officer may, if he thinks fit, before receiving the rent, examine the person who has signed the statement required under the last foregoing section.

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

in case (*a*) of the last foregoing section, by the person to whom the rent was tendered;

in case (*b*) of that section, by the person specified in the application as the person to whom the rent was payable;

in case (*c*) of that section, by the co-sharers jointly; and

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

[D., § 100. C. B., s. 61 (*a*). B. B., s. 53 (*a*).] Section 105.

Notification of receipt of deposit.

75. (*1*) The officer receiving the deposit shall forthwith cause to be affixed in a conspicuous place in his office a notification of the receipt thereof, containing a statement of all material particulars.

(*2*) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the officer shall cause a notice of the receipt of the deposit to be served, free of charge, on every person who he has reason to believe claims or is entitled to the deposit.

[D. § 100. C. B., s. 61, cls. (*b*) & (*c*). B. B. s. 53, cls. (*b*) & (*c*). Sections 106 and 107.

Payment or refund of deposit.

76. (*1*) The officer may pay the amount of the deposit to any person appearing to him to be entitled to the same, or may, if he thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(*2*) The payment may, if the Local Government so direct, be made by postal money-order.

(*3*) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the officer with whom the rent was deposited.

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

Arrears of rent.

Arrears of rent. [C. B., s. 64. B. B., s. 56.] Section 125.

Rent first charge on transferable holding.

77. (*1*) The rent of every transferable holding shall be a first charge on the holding.

(*2*) If the right, title and interest of the tenant is brought to sale in execution of a money decree obtained by a person other than the landlord, the landlord shall be entitled to be first paid out of the sale proceeds any rent which may be due to him by the tenant, but this right shall be without prejudice to the landlord's charge under sub-section (*1*).

[D. §§ 18 (5) & 93. C. B. ss. 79(5) & 152. B. B. ss. 72 (5) & 169.] Section 111.

Ejectment from non-transferable holding for arrears.

78. (*1*) When an arrear of rent remains due in respect of a non-transferable holding at the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Fusli or Amli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

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

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

[D. § 101. C. B., s. 56. B. B., s. 48.] Section 108.

Interest on arrears.

79. In fixing the rate of interest on an arrear of rent, the Court shall have regard to established usage and to the agreement, if any, between the parties; but shall ordinarily decree simple interest at the rate of twelve per centum per annum from the expiration of the agricultural year in which the arrear fell due to the institution of the suit.

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(Chapter VIII.—General Provisions as to Rent. Secs. 80—85.)

[D., § 68. C. B., s. 90. B. B. s. 96.] Section 109.

Power to award damages *on rent* withheld without reasonable cause or to defendant improperly sued for rent.

80. (*1*) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

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

D., § 69. C. B., s. 91. B. B., s. 97.] Section 110.

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

Produce-rents.

Produce-rents. [C. B., s. 84, B. B., s. 88.] Section 112.

Order for appraising or dividing produce.

81. (*1*) Where rent is taken by appraisement or division of the produce—

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

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

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

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

(*3*) Where a Collector makes an order under this section, he may by order prohibit the removal of the produce until the appraisement or division has been effected.

Section 113.

Procedure where officer appointed.

82. (*1*) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selecting those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

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

(*3*) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector. Section 115 (*1*).

(*4*) The Collector shall consider the report, and after giving the parties an opportunity of being heard and making such enquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just. Section 115 (*2*).

(*5*) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final and shall be enforceable as a decree.

(*6*) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office. [C. B., s. 85, B. B., s. 89.] Section 118.

Rights and liabilities as to possession of crop.

83. (*1*) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(*2*) Where rent is taken by division of the produce, the tenant shall be entitled to exclusive possession of the whole produce until it is divided.

(*3*) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord, but shall not be entitled to remove any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time.

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

Liability for rent on change of landlord.

Liability for rent on change of landlord. [D., §. 9. C. B., s. 78. B. B., s. 79.] Section 122.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

84. (*1*) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has given notice of the transfer to the tenant.

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

Illegal Cesses, &c.

Illegal cesses, &c. [D. §§ 13 & 81 C. B., s. 71. B. B., s. 63. (2).] Section 124.

Abwab, &c., illegal.

85. All impositions upon tenants under the denomination of *abwab*, *mahtut*, or other like appella-

tions, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

[D., § 64. B. B., ss. 63 (2), 64 (*a*), 93.] Section 124.

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

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

Improvements.

[C. B., s. 29. B. B., s. 69.] Section 126.

87. (*1*) For the purposes of this Act the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the letting-value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

Definition of improvement.

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

(*a*) the construction of wells, tanks and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(*b*) the preparation of land for irrigation;

(*c*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(*d*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto; and

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

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

88. Where a raiyat holds at a fixed rent or a fixed rate of rent, his landlord shall not be entitled, as such, to prevent him from making any improvement in respect of his holding.

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

[C. B., s. 77. B. B., s. 69.] Section 127.

89. (*1*) Where a raiyat has an occupancy-right in his holding neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

Right to make improvement in case of occupancy-holding.

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

(*3*) If a question arises between the raiyat and his landlord—

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

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

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

[C. B., s. 77. B. B., s. 69.] Section 128.

90. (*1*) A non-occupancy-raiyat shall be entitled to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

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

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

91. (*1*) A landlord may register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making, by application to such Revenue-officer as the Local Government may appoint.

Registration of landlord's improvements.

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

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

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

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

92. (*1*) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon record the evidence in the presence of the parties, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

Application to record evidence as to improvement.

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

[C. B., ss. 30 (*e*) and 29.] Section 129.

93. (*1*) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been made.

Compensation for raiyats' improvements.

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

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

(*4*) Improvements made by a raiyat between the 2nd day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

Section 130.

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

Section 131.

94. (*1*) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

Principle on which compensation is to be estimated.

(*a*) to the amount by which the letting-value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(*b*) to the condition of the improvement, and the probable duration of its effects;

(*c*) to the labour and capital required for the making of such an improvement;

(*d*) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

(*e*) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

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

Surrender and abandonment.

Surrender and abandonment.

[D. § 12 (3). C. B., s. 79 (3). B. B., s. 72 (3).] Section 139.

95. (*1*) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his right and interest in the holding.

Surrender.

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

(*3*) In the following cases the Court shall for the purposes of this section presume, until the contrary is shown, that such notice was so given, namely:—

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

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

(*c*) if the landlord himself, at any time during the agricultural year next following the surrender, lets to another tenant or cultivates the holding or any part thereof.

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

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

Bengal Tenancy Bill.

(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants. Secs. 96—102.)

[D. s. 12 (4). C.B., s. 79 (4) B.B., s. 72 (4).] Section 140.

96. (*1*) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

Abandonment.

(*2*) When a landlord enters under this section he shall cause a notice in the prescribed form to be published in such manner as the Local Government by rule directs, stating that he has treated the holding as abandoned and has entered on it accordingly.

(*3*) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may order recovery of possession on such terms, if any, with respect to compensation to persons injured as to the Court may seem just.

Sub-division of holding.

Sub-division of holding. [B. B., ss. 21 (*b*), 37.] Section 150.

97. Nothing in this Act shall entitle a tenant whose holding is transferable to transfer or bequeath, without the consent of his landlord, a portion only of the land comprised in the holding so that it may be held from the landlord by the transferee or the person to whom it is bequeathed as a separate holding.

Portion of holding not transferable.

Ejectment.

Ejectment. [C. B., s. 79 (5), (6) & (7). B. B., s. 72 (5), (6) and (7).] Section 149.

98. No tenant shall be ejected from his holding except in execution of a decree.

No ejectment except in execution of decree.

Measurements.

Measurements. [D. § 58. C.B., s. 75. B. B., s. 67.] Section 133.

99. (*1*) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him on this behalf, enter on and measure all land comprised in his estate or tenure.

Landlord's right to measure land.

(*2*) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases:—

(*a*) Where the area of the holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area.

(*b*) Where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation.

(*c*) Where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

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

[D. s. 94. (B.B., ss. 176 & 177.] Sections 134 and 135.

100. (*1*) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

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

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

[D. § 94. C.B., s. 76(*a*). B.B., s. 68 (*a*).] Section 137.

101. (*1*) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made according to the Government measure of 14,400 square feet to one standard bighá.

Standard of measurement.

(*2*) If the rights of the parties are regulated by any different local measure, the Government measure shall be converted into the local measure for the purposes of the suit.

[D. § 98. C.B., s. 76 (*b*) B.B., s. 68(*b*).] Section 138.

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

Managers.

Managers. [D. § 16. C.B., s. 66 (1). B. B., s. 57 (1)] Section 142.

102. When co-owners of an estate or tenure disagree as to the management thereof, and in consequence there has ensued, or is likely to ensue,

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

(*a*) inconvenience to the public, or

(*b*) injury to private rights,

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

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

VII, 1876 (B. C)

Bengal Tenancy Bill.

(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants. Secs. 103—109.)

(Chapter X.—Record-of-rights and Settlement of Rents. Sec. 110.)

[C. B., s. 65 (2). B. B., s. 57 (2).] Section 143.

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

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

[C. B., s. 66 (1). B. B., s. 58 (1).] Section 144.

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

Power to appoint manager if order is not obeyed.

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

(*b*) in any case appoint a manager.

[C. B., s. 66 (2). B. B., s. 58 (2).] Section 145.

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

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

[C. B., s. 66(3). B. B. s. 58(3).] Section 146.

106. In any case in which the Court of Wards undertakes the management of an estate or tenure under section 104, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immoveable property shall apply to the management.

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

IX (B.C.) of 1879.

[C. B., s. 67. B. B., s. 59.] Section 147.

107. (*1*) A manager appointed under section 104 shall receive by way of remuneration such fixed salary or percentage of the money collected by him as manager as the District Judge from time to time directs.

Provisions applicable to manager.

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

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

(*4*) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(*5*) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(*6*) He shall pass his accounts at such period and in such form as the District Judge may direct.

(*7*) He may make any application which the proprietors could make under section 112.

(*8*) He shall be removeable by the order of the District Judge, and not otherwise.

[C.B., s. 68. B. B., s. 60.] Section 148.

108. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 104, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

Power to restore management to co-owners.

109. The High Court may from time to time make rules defining the powers and duties of managers under the foregoing sections.

Power to make rules.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

Record-of-rights.

Record-of-rights. Section 154.

110. (*1*) The Local Government may in any case with the previous sanction of the Governor General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a record-of-rights shall be prepared for all tenancies or any class of tenancies in a local area by Revenue-officers to be from time to time appointed by the Local Government.

Power to order preparation of record-of-rights.

(*2*) The cases in which an order may be made under this section without the previous sanction of the Governor General in Council are the following, namely:—

(*a*) where the landlord or a large proportion of the landlords or of the tenants applies for such an order and deposits for the payment of expenses such amount as the Local Government directs;

(*b*) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally; and

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(Chapter X.—Record-of-rights and Settlement of Rents. Secs. 111—117.)

(*c*) where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards.

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

Section 164.

Particulars to be recorded.

111. Where an order is made under the last foregoing section the particulars to be recorded shall be specified in the order, and may include some or all of the following, namely :—

(*a*) the name of each tenant ;

(*b*) the class to which he belongs, that is to say whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy raiyat or under-raiyat ;

(*c*) the situation, quantity and boundaries of the land held by him ;

(*d*) the name of his landlord ;

(*e*) the rent payable ;

(*f*) the mode in which that rent has been fixed, whether by contract, by order of a Court or otherwise ;

(*g*) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases ;

(*h*) the special conditions, if any, under which the tenant holds.

Power for Revenue-officer to record particulars on application of proprietor or tenure-holder.

112. On the application of a proprietor or tenure-holder, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

Sections 157 to 159.

Publication of record.

113. *(1)* When the Revenue-officer has completed the record he shall cause a draft thereof to be locally published in such manner and for such period as the Local Government by rule directs, and shall receive and consider any objection which may be made to any entry therein during the period of publication.

(*2*) After the expiration of this period the Revenue-officer shall finally settle the record, and shall cause it to be locally published in such manner as the Local Government by rule directs, and such publication shall be conclusive evidence that the record has been duly made under this Chapter.

Procedure in case of dispute as to entries in record.

114. If at any time before the final publication of the record under the last foregoing section a dispute arises as to the correctness of any entry which the Revenue-officer proposes to make or has made therein, the Revenue-officer shall hear and decide the dispute, and for that purpose shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and his decision shall have the force of a decree. XIV of 1882.

Appeals from decisions of Revenue-officers.

115. *(1)* The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under the last foregoing section.

(*2*) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under the last foregoing section, and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals. XIV of 1882.

(*3*) Subject to the provisions of Chapter XLII of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge as if he were a Court subordinate to the High Court within the meaning of the first section of that Chapter. XIV of 1882.

Undisputed entries in record to be presumptive evidence.

116. *(1)* Every record made under this Chapter shall distinguish between the disputed and the undisputed entries therein

(*2*) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved. Section 165.

Settlement of rents.

Power to order Revenue-officers to settle rents.

117. *(1)* The Local Government may, if it thinks fit, in any of the cases next hereinafter mentioned, make an order directing that the rents of all tenants or of any class or classes of tenants in any local area shall be settled by Revenue-officers to be from time to time appointed by the Local Government in this behalf : Settlement of rents. Section 151.

Provided that the Local Government shall not make such an order until it is satisfied after local enquiry that the making of the order would be expedient.

(*2*) The cases in which an order may be made under this section are the following, namely :—

(*a*) any case in which a Revenue-officer may be directed under this Chapter to prepare a record-of-rights, and

(*b*) where a settlement of revenue is being made in respect of the local area.

(*3*) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made, and an order so notified shall continue in force until it is rescinded by an order notified in like manner.

(*4*) While an order under this section continues in force in respect of any tenants, a Civil Court shall not entertain a suit under this Act for the enhancement or reduction of the rents of any of those tenants. Section 152.

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(Chapter X.—Record-of-rights and Settlement of Rents. Secs. 118—122.)

(Chapter XI.—Tables of Rates. Secs. 123 & 124.)

Section 156

Procedure for settlement of rents.

118. (1) When a Revenue-officer is directed under this Chapter to make a settlement of rents he shall ascertain and make a record of the particulars specified in section 111, and such other particulars, if any, as the Local Government may direct him to ascertain and record.

(2) If at any time before the rent-roll is finally published as hereinafter provided, a dispute arises as to the correctness of any entry which the officer has made or proposes to make in the record under sub-section (1), the provisions of sections 114 and 115 shall apply.

Section 153.

(3) In the case of a tenure the rent of which is liable to alteration, or an occupancy-raiyat's holding, the officer shall, on the application of either landlord or tenant, settle a fair and equitable rent in respect thereof.

Section 153.

(4) For this purpose he shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in settling rents.

(5). In all proceedings under sub-sections (3) and (4) the officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure, and his decision in every such proceeding shall have the force of a decree. XIV of 1882.

(6). An appeal shall lie from every such decision to the Special Judge appointed under section 115, whose decision thereon shall be final, subject to this qualification, that if in a second appeal under sub-section (2) of this section the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any holding has been settled, the Court may settle a new rent for the holding, but in so doing shall be guided by the rents of the other holdings of the same class comprised in the same rent-roll, as ascertained or settled under this section.

(7) When the Revenue-officer has recorded the particulars and settled the rents which he is required to record and settle, he shall prepare the draft of one or more rent-rolls, showing the particulars recorded by him, and, when he settles the rent, the amount of the rent as settled.

(8) Section 113 shall apply to every rent-roll made under this section as if it were a record within the meaning of that section, and section 116 shall apply to all entries made in any such rent-roll under sub-section (1) of this section.

Time at which alteration of rent is to take effect.

119. When any rent is altered under the last foregoing section, the alteration shall take effect from the beginning of the agricultural year next after the final publication of the rent-roll.

Period for which rents as settled are to remain unaltered.

120. When a landlord is entitled to apply to have the amount of the rent of a holding settled under section 118, sub-section (3), the rent of the holding as ascertained or settled under this chapter shall not be enhanced during a period of fifteen years from the date of the final publication of the rent-roll, except on the ground of a landlord's improvement or of an alteration in the area of the holding.

Supplemental.

Expenses of proceedings under Chapter

121. Where an order is made under this chapter on the application of a landlord, or of several landlords or tenants, or for the purpose of settling or averting a serious dispute between tenants and their landlords, all expenses incurred by the Government in carrying out the provisions of this chapter in any local area, including the salaries of all officers employed exclusively in carrying out those provisions therein, and such portions as the Local Government may, from time to time, fix of the salaries of officers employed in carrying out those provisions therein in addition to their other public duties, shall be defrayed by the landlords and tenants in that local area whose rents are ascertained or settled under this chapter, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine ; and the proportion of those expenses so to be defrayed by any person shall be recoverable from him as if it were an arrear of revenue due by him. Supplemental. Section 163.

Presumption as to fixity of rent not to apply where record has been prepared.

122. When the particulars mentioned in section 111, clause (*b*), have been recorded under this chapter in respect of any tenancy, the presumption under section 64 shall not thereafter apply to that tenancy.

CHAPTER XI.

TABLES OF RATES.

Power to direct preparation of table.

123. The Local Government may, by an order in the official Gazette, direct a Revenue-officer to take steps to prepare for any local area, with the aid of such assessors as the Local Government may appoint in this behalf, a table showing for each class of land comprised in that area the rate of rent fairly and equitably payable by occupancy-raiyats. [B. B., ss. 131 & 132.] Section 62.

Contents of table.

124. The table shall specify— [B. B., s. 133.] Section 63.

(*a*) the several classes of land for which, having regard to the nature of the soil, situation, means of irrigation and other like considerations, it is necessary to fix different rates of rent ; and

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[B.B., s. 133.] Section 64.

(*b*) the rate of rent fairly and equitably payable by occupancy-raiyats holding land of each such class;

Principle on which rent-rates are to be fixed.

125. In fixing the rate of rent for any class of land under section 124 regard shall be had—

(*a*) to the rates of rent ordinarily payable by occupancy-raiyats for land of that class at the time when the table is prepared;

(*b*) to the average prices of staple food crops in the locality or at the usual markets about the time at which those rates were fixed, or, if that time or the average prices about that time cannot readily be ascertained, to the average prices about any other time which it may appear equitable and practicable to take for the purpose of comparison;

(*c*) to the average prices of staple food crops in the locality or at the usual markets at the time at which the table is prepared; and

[C. B., s. 23, (*b*). B. B., s. 24, (*b*).]

(*d*) to the following rule, namely, that when the rate of rent for any class of land is raised on account of an increase in the average prices of staple food crops the new rate shall not bear to the old rate a higher proportion than the increased average prices bear to the former average prices:

[C.B., s. 23, (*c*). B. B., s. 24, (*c*).]

Provided that the rate fixed for any class of land shall not exceed the existing rate by more than four annas in the rupee.

[B.B., s. 137.] Section 65.

Local publication of the table.

126. When the Revenue-officer has prepared the table, he shall publish it in the local area to which it relates, in the vernacular language prevailing in that local area, in such manner as the Local Government may from time to time prescribe.

[B.B., s. 138.] Section 66.

Revenue-officer to deal with objections.

127. Any person objecting to any entry in the table may present a petition to the Revenue-officer within a period of one month after the publication; and the Revenue-officer, with the aid of the assessors, shall consider any such objection, and may alter or amend the table.

[B.B., s. 139.] Section 67.

Table to be submitted to superior Revenue-authorities.

128. If no objection is made within the said period of one month, or, where objections are made, after those objections have been disposed of, the Revenue-officer shall submit the table, together with his proceedings, a report setting forth the grounds of his decision on each point, and any petitions of objection which may have been received, through the Commissioner of the Division to the Board of Revenue for approval.

[B. B., s. 140.] Section 68.

Proceedings of Board of Revenue thereupon.

129. The Board of Revenue may amend the table submitted under the last foregoing section in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made, or may return the case for further enquiry.

[B. B., s. 141.] Section 69.

Publication of table after final sanction.

130. When a table of rates has been sanctioned by the Board, it shall be submitted to the Local Government, which, after considering such objections as may be submitted to it in writing, may amend the table in any manner it thinks fit, and may direct, if it thinks fit, that the table or amended table shall be published in the official Gazette with a specification of the local area to which it applies.

[B. B., s. 143.] Section 70.

Period for which table remains in force.

131. A table for any local area published under the last foregoing section shall come into force on the date on which it is so published, and shall continue in force for such period, not less than fifteen or more than thirty years, as the Local Government at the time of publication may direct.

[B. B., s. 142.] Section 71.

Table to be conclusive evidence.

132. The publication of a table under section 130 shall be conclusive evidence in any proceeding under this Act—

(1) that the proceedings for the preparation of the table have been duly conducted in accordance with this Act; and

(2) that, except as in this Act provided, the rates shown in the table for each class of land are the fair and equitable rates payable for land of that class by occupancy-raiyats within the local area to which the table applies.

Section 72.

Expenses incurred in preparing table how defrayed.

133. All expenses incurred by the Government in preparing a table of rates for any local area, including the salaries of all officers employed exclusively in its preparation, and such portions as the Local Government may from time to time fix of the salaries of officers employed in its preparation in addition to their other public duties, shall be defrayed by occupanney-raiyats and their landlords in that local area in such proportions as the Local Government may from time to time determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable from him as if it were an arrear of land-revenue due by him.

[B. B., s. 144.] Section 73.

Suit to enhance where table is in force.

134. When a table is in force under the foregoing sections for any local area, the landlord of any holding within that area, held by an occupancy-raiyat at a money rent, may institute a suit to enhance the rent then payable on the ground that it is below that which would be payable at the rates shown in the table; and the Court

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shall enhance the rent in accordance with the rates shown in the table: Provided that—

1st.—Where the rent of any land comprised in the holding would, by reason of a change having taken place in or in regard to the land since the raiyat or his predecessor in interest began to hold it, be fixed under this section at a higher rate, and would, but for that change, have been fixed under this section at a lower rate, the following rules shall apply, namely:—

[D. § 43. C. B., s. 22, cls. (3) and (4). B. B., s. 23, cls. (3) & (4).]

(*a*) if the change has been effected solely by the agency or at the expense of the raiyat or his predecessor in interest, the Court shall fix the rent of that land at the lower rate;

(*b*) if the change has been effected partly by the agency or at the expense of the landlord or his predecessor in interest, and partly by the agency or at the expense of the raiyat or his predecessor in interest, the Court shall fix the rent of the land at such rate intermediate between the higher rate and the lower rate as, having regard to all the circumstances of the case, it thinks fair and equitable; and

[C. B., s. 23, cl. (*a*). B. B., s. 24, (*a*).]

(*c*) if it is not proved that the change has been effected by the agency or at the expense of the landlord or the raiyat, or the predecessor in interest of either of them, the Court shall fix the rent of the land at a rate equal to the lower rate, together with half the difference between the higher rate and the lower rate.

2ndly.—When the raiyat proves that by contract or by custom, or on some equitable ground, he is entitled to hold at a rate lower than the rate applicable under this section, the Court shall fix the rent at the lower rate.

3rdly.—Section 49 shall apply to all decrees for enhancement passed under this section, and section 50 shall apply to all suits for enhancement under this section as if they were suits for enhancement under Chapter V on the ground that the rent is below the prevailing rate or on the ground of an increase in prices.

Illustrations.

(*a*) The rates shown in the table for land of a certain description are—

when the land is irrigated from a well . Rs 4 per acre,
when the land is not so irrigated . . Rs. 2 „

The holdings of *A*, *B*, *C* and *D*, occupancy-raiyats, are composed of land of that description irrigated from wells constructed on these holdings respectively.

The well on A's holding is an ancient one existing from a time anterior to the tenancy: that on B's holding has been constructed by the landlord since the commencement of the tenancy: that on C's holding has been constructed by the raiyat: that on D's holding has been constructed by the landlord and raiyat, each contributing some portion of the labour and materials. The rents of the holdings of A and B must be fixed at Rs. 4 per acre, that of C's holding at Rs. 2 per acre, and that of D's holding at such rate intermediate between Rs. 2 and Rs. 4 as the Court thinks fair and equitable.

(*b*) The rates shown in the table for land of a certain description are as follows:—

when such land is irrigated from a branch of a river . . . . . Rs. 4 per acre,
when such land is not so irrigated . . Rs. 2 „

The holdings of E and F, occupancy-raiyats, are composed of land of that description, and were not irrigable until 40 years ago, when, owing to a change in the course of a neighbouring river, a new branch established itself contiguous to them. E has been in occupation of his holding 50 years, F only 20; the rent of E's holding must be fixed at Rs. 3, that of F's holding at Rs. 4.

CHAPTER XII.

RECORD OF PROPRIETOR'S PRIVATE LANDS.

[B.B. ss. 76 to 82.] Sections 7 to 13.

Power for Government to order survey and record of proprietor's private lands.

135. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of section 30.

Power for Revenue-officer to record private land on application of proprietor or tenant.

136. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Procedure for recording private land.

137. When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 113, 114, 115 and 116 shall apply.

[C. B., s. 81. B. B., ss. 3 & 75.] Section 5.

Rules for determination of proprietor's private land.

138. (*1*) The Revenue-officer shall record as a proprietor's private land—

(*a*) Land which is proved to have been cultivated as khámár, zírat, sír, nij, nij-jot or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village custom as proprietor's khámár, zírat, sír, nij, nij-jot or kamat.

(*2*). In determining whether any other land ought to be recorded as a proprietor's private land

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the officer shall have regard to local custom and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

CHAPTER XIII.

DISTRAINT.

[B. B., ss. 101, 104, 123.] Section 166.

139. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator,

Cases in which an application for distraint may be made.

(*a*) any crops or other products of the earth standing or ungathered on the holding;

(*b*) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead:

Provided that an application shall not be made under this section—

VII (B. C.) of 1876.

(*1*) by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or

(*2*) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or

[B. B., ss. 71, 125.]

(*3*) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord.

[B. B., ss 104-5.] Section 167.

140. (*1*) Every application under the last foregoing section shall specify—

Form of application.

(*a*) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;

(*b*) the name of the tenant;

(*c*) the period in respect of which the arrear is claimed;

(*d*) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable;

(*e*) the nature and approximate value of the produce to be distrained;

(*f*) the place where it is to be found, or such other particulars as may suffice for its identification; and

(*g*) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(*2*) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints; and, if the application so verified contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, that 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.

XIV of 1882.

[B. B., ss. 105 & 106.] Section 168.

141. (*1*) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

Procedure on receipt of application.

(*2*) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(*3*) Where a Court cannot forthwith admit or reject an application under sub-section (*2*), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(*4*) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may if it thinks fit make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

[B. B. s. 107.] Section 169.

142. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by

Execution of order of distraint.

Bengal Tenancy Bill.

(Chapter XIII.—Distraint. Secs. 143—152.)

taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court:

[D. § 111.]

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

[B. B., s. 108.] Section 170.

143. (*1*) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

Service of demand and account.

(*2*) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(*3*) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on the outer door of the house in which he usually resides.

[B. B., ss. 109 and 110.] Section 171.

144. (*1*) A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation.

Right to reap, &c., produce.

(*2*) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(*3*) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

[B. B., s. 113.] Section 172.

145. (*1*) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained and the demand for which it is distrained, and notifying that he will, at a place and on a specified day, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction:

Sale proclamation to be issued unless demand is satisfied.

Provided that when the crops or products distrained from their nature admit of being stored but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(*2*) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

[B. B., s. 114.] Section 173.

146. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the distraining officer is of opinion that it is likely to sell there to better advantage.

Place of sale.

[D., s. III.] Section 174.

147. (*1*) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

When produce may be sold standing.

(*2*) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

[B. B., s. 115.] Section 175.

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

Manner of sale.

[B. B., s. 116.] Section 176.

149. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorised to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

Postponement of sale.

[B. B., s. 117.] Section 177.

150. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

Payment of purchase-money.

[B. B., s. 118.] Section 178.

151. 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 be given to purchaser.

[B. B., s. 119.] Section 179.

152. (*1*) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the

Proceeds of sale how to be applied.

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(Chapter XIV.—Judicial Procedure. Secs. 159 & 160.)

costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made by the Local Government in this behalf.

(2) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

[B. B., s. 120.] Section 180.

153. 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.

Certain officers may not purchase.

[B. B., ss. 111, 112 & 123.] Section 181.

154. (1) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 145, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn.

Procedure where demand is paid before the sale.

(2) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his tenant's sub-letting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

[B. B., s. 124.] Section 182.

155. (1) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Amount paid by under-tenant for his lessor may be deducted from rent.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

[B. B., s. 126.] Section 183.

156. When land is sub-let, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

Conflict between rights of superior and inferior landlords.

Sectoin 184.

157. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid to the owner of the property under section 152 without the sanction of the Court by which the order of attachment or sale was issued.

Distraint of property which is under attachment.

158. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 140 in any case in which such an application is not permitted by section 130 may institute a suit against the applicant for the recovery of compensation.

Suit for compensation for wrongful distraint.

CHAPTER XIV.

JUDICIAL PROCEDURE.

159. (1) The High Court may, from time to time, with the approval of the Local Government, make rules declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

Power to modify Civil Procedure Code in application to landlord and tenant suits.

XIV of 1882.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits.

XIV of 1882.

Section 188.

160. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the recovery of the land in respect of which the relation of landlord and tenant exists between the parties.

Jurisdiction in proceedings under Act.

XIV of 1882.

(2) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall

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(Chapter XIV.—Judicial Procedure. Secs. 161—168.)

be made to the Court which would have jurisdiction to entertain a suit for the recovery of possession of the holding.

[D., § 169. C. B., s. 150. B. B., s. 167 (a).] Section 189.

161. Every náib or gumáshta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending.

Náibs or gumáshtas to be recognized agents.

XIV of 1882.

[D § 173. C. B., s. 147. B. B., s. 164.] Section 190.

162. The particulars referred to in section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may from time to time prescribe in this behalf.

Special register of suits.

XIV of 1882.

Procedure in rent-suits.

163. The following rules shall apply to suits for the recovery of rent:—

[C. B., s. 165. B. B., s. 187.] Section 191.

(a) Sections 121 to 127 (both inclusive), 129, 305, and 320 to 325C (both inclusive) of the Code of Civil Procedure shall not apply to any such suit.

XIV of 1882.

[D., §§ 149 & 185. C. B., s. 167. B. B., s. 189.] Section 192.

(b) The plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent, and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification.

XIV of 1882.

[D., § 192. C. B., s. 174. B. B., s 195.] Section 193.

(c) The summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only.

Section 194.

(d) The service of the summons may, if the Court so directs, be effected, either in addition to or in substitution for any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866.

XIV of 1882.

[D., § 108. C. B., s. 184. B. B., s. 206.] Section 195

(e) A written statement shall not be filed without the leave of the Court.

[BB., s. 214.] Section 196.

(f) The rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply, whether an appeal is allowed or not.

XIV of 1882.

[D., §§ 177 & 223. B. B., ss. 155 & 197. B B., ss. 171 & 219.] Section 197.

(g) The Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears.

(h) Notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

XIV of 1882. [C. B., s. 198. B. B., s 220.] Section 200.

Section 199.

164. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Payment into Court of money admitted to be due to third person.

(2) Where such a payment is made the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within *three months* from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff, money paid to him under sub-section (3):

165. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Payment into Court of money admitted to be due to landlord.

166. When a defendant is liable to pay money into Court under either of the last foregoing sections, if the Court thinks that there are sufficient reasons for ordering that the money be paid by instalments, it may take cognizance of the defendant's plea on his paying into Court such instalment as the Court directs.

Provision as to payment by instalments.

Section 199 (2).

167. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person as the case may be.

Court to grant receipt.

[D., § 179. C.B., ss. 1 57 & 220. B. B., ss. 173 & 242.] Section 198.

168. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

Appeals in rent-suits.

(a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

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(*b*) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity; and may pass such order as the District Judge thinks fit.

[C. B., ss. 96 & 98 (*b*). B. B., ss. 128 & 130, cl. (*b*).] Section 201.

169. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing for special reasons a later date from which any such decree shall take effect.

Date from which decree for enhancement takes effect.

[B. B., ss. 21 (*c*), 31, 44 & 45 Vic., C. 41, s. 14.] Section 202.

170. (*1*) A suit for the ejectment of a tenant, on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment, shall not be entertained unless the landlord has requested the tenant, where the damage or breach is capable of remedy, to remedy the same, and, in any case, to pay reasonable compensation for the damage or breach, and the tenant has failed to comply within a reasonable time with that request.

Relief against forfeitures.

(*2*) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the damage or breach, and whether, in the opinion of the Court, the damage or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the damage or breach is declared to be capable of remedy, to remedy the same.

(*3*) The Court may, from time to time, for special reasons, extend a period fixed by it under subsection (*2*).

(*4*) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the damage or breach is declared by the Court to be capable of remedy, remedies the damage or breach to the satisfaction of the Court, the decree shall not be executed.

Rights of ejected raiyats in respect of crops and land prepared for sowing.

[C. B., s. 80. B. B., s. 73.] Section 203.

171. The following rules shall apply in the case of every raiyat ejected from a holding:—

(*a*) When the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment.

(*b*) When the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value.

(*c*) But a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage.

(*d*) If the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

[C. B., s. 80, B. B., s. 73.] Section 204.

172. (*1*) In all suits and proceedings for ejectment, the Court shall inquire into and determine all claims under this Act by the landlord against the tenant as such, or by the tenant against the landlord as such.

Adjustment of mutual claims in ejectment-proceedings.

Section 205.

(*2*) If it appears to the Court that the amount payable by the landlord to the tenant as such exceeds the amount payable by the tenant to the

Section 206.

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(Chapter XV.—Sale for Arrears under Decree. Secs. 175—179.)

landlord as such, the decree or order for ejectment (if any) shall, unless the landlord and tenant come to an arrangement regarding the payment of the excess sum, specify a time within which it must be paid into Court.

(*3*) If it is so paid within the time specified, the Court shall eject the tenant; and

if it is not so paid, the Court shall refuse to eject the tenant.

173. When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Power for Court to fix fair rent as alternative to ejectment.

B., s. 151. B., s. 168.] ction 207.

174. (*1*) The Court having jurisdiction to determine a suit for the recovery of land held by a tenant may, on the application of either the landlord or the tenant, determine all or any of the following matters, namely:—

Application to determine incidents of tenancy.

(*a*) the situation, quantity and boundaries of the land held by the tenant;

(*b*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under raiyat, and, if he is a tenure-holder, whether his rent is liable to enhancement; and

(*c*) the rent payable by him at the time of the application.

(*2*) If in the opinion of the Court any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government by rule directs.

(*3*) The order on any application under this section shall have the effect of and be subject to the like appeal as a decree.

XIV of 1882.

CHAPTER XV.

SALE FOR ARREARS UNDER DECREE.

175. Where a transferable holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as 'protected interests' but with power to annul the interests defined in this chapter as 'incumbrances.'

General powers of purchaser as to avoidance of incumbrances.

Provided as follows:—

(*a*) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;

(*b*) the power to annul shall be exercisable only in manner by this chapter directed.

176. The following shall be deemed to be protected interests within the meaning of this Chapter—

Protected interests.

[D. §§ 12 (11) and 155. C. B., ss. 226, Expl., & 210, B. B., ss 228, Expl., & 282.] Section 208 (*1*).

(*a*) any under-tenure existing from the time of the permanent settlement;

(*b*) any under-tenure recognized by the settlement proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

(*c*) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made;

(*d*) any right of occupancy;

(*e*) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and

(*f*) any right or interest which the landlord at whose instance the holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

Meaning of "incumbrance" and "registered and notified incumbrance".

177. For the purposes of this Chapter—

(*a*) the term "incumbrance" used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section.

Section 206 (*1*).

(*b*) The term "registered and notified incumbrance" used with reference to a holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by an instrument registered under the Indian Registration Act, 1877, and of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided.

[C. B., s. 206 Expl. B. B., s. 228 Expl.] Section 208 (*2*).

III of 1877.

178. When a decree has been passed for an arrear of rent due for a transferable holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attachment and sale of the holding in execution of the decree, he shall produce a statement of the annual rent of the holding, and, if the holding is a permanent tenure, a copy of so much of the register kept under Chapter III of this Act as relates to the tenure.

Application for sale of holding.

[C. B., s. 201. B. B., s. 228.] Section 209.

XIV of 1882.

179. (*1*) When an order has been passed for the sale of a holding upon an application made under the last foregoing section,

Proclamation announcing sale.

[D. § 13. C. B., s. B. B., s. Section 210.

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(Chapter XV.—Sale for Arrears under Decree. Secs. 180—186.)

the proclamation made under section 287 of the Code of Civil Procedure shall, in addition to stating and specifying the particulars mentioned in that section, announce— XIV of 1882.

(*a*) in the case of a tenure, that the tenure will first be put up to auction subject to the registered and notified incumbrances and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

(*b*) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(2) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published in such manner as the Local Government may, from time to time, direct in this behalf.

[C. B., s. 206. B. B., s. 228 (*a*) and Expl.] Section 211.

180. (*1*) When a tenure has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure shall be sold subject to such incumbrances.

Sale of tenure subject to registered and notified incumbrances, and effect thereof.

(2) The purchaser at a sale under this section may in manner provided by section 184, and not otherwise, annul any incumbrance upon the tenure not being a registered and notified incumbrance.

[C. B., s. 207 B. B., s. 229 (*a*) Section 212 (*1*).

181. (*1*) If the bidding for a tenure put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure shall be put up to auction and sold with power to avoid all incumbrances.

Sale of tenure with power to avoid all incumbrances, and effect thereof.

XIV of 1882.

[D., § 155. C. B., s. 210. B. B., s. 232.] Section 212 (*2*).

(2) The purchaser at a sale under this section may, in manner provided by section 184, and not otherwise, annul any incumbrance on the tenure.

182. The foregoing sections shall apply to a holding at a fixed rent or rate of rent as if it were a tenure.

Application of foregoing provisions to holdings at fixed rates.

[B. B., s. 228, (*b*).] Section 213.

183. (*1*) When an occupancy-holding has been advertised for sale under section 179, it shall be put up to auction and sold with power to avoid all incumbrances.

Sale of occupancy-holding with power to avoid all incumbrances, and effect thereof.

(2) The purchaser at a sale under this section may in manner provided by section 184, and not otherwise, annul any incumbrance on the holding.

Section 214.

184. (*1*) A purchaser having power to annul an incumbrance under any of the foregoing sections and desiring to annul the same, may, within one year from the date on which he first has notice of the incumbrance, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

Proceedure for annulling incumbrances under the foregoing sections.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for a service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

[B. B., s. 225 (*c*).] Section 215.

185. (*1*) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

[D. § 246. C. B., s. 211. B. B., s. 233.] Section 216.

186. (*1*) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say:— XIV of 1882.

Rules for disposal of the sale-proceeds.

(*a*) There shall first be paid to the decree-holder the costs incurred by him in bringing the holding to sale.

(*b*) There shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made.

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(Chapter XVI.—Summary Sale for Arrears. Sec. 194.)

(*c*) If there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the holding between the institution of the suit and the date of the sale, but not more than six months after the date of the final decree.

(*d*) The balance (if any) remaining after the payment of the rent mentioned in clause (*c*) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (*c*), the Court shall determine the dispute, and the determination shall have the force of a decree.

XIV of 1882. D., § 153. C. B., s. 204. B. B., s. 226.] Section 217.

Holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.

187. (*1*) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a holding attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of a holding in execution of such a decree has been made, the holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the holding on the ground that the decree has been satisfied out of Court.

(3) Nothing in this section shall affect the right of any person to institute a suit to set aside the sale of a holding under this Chapter.

D., §§ 35, 36, 154. C. B., s. 205. B. B., s. 227.] Section 218.

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the holding.

188. (*1*) When any person having, in a holding advertized for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,

(*a*) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per cent. per annum and secured by a mortgage of the holding to him;

(*b*) his mortgage shall take priority of every other charge on the holding other than a charge for arrear of rent; and

(*c*) he shall be entitled to possession of the holding as mortgagee and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

[D., §§ 35, 36, 154. C. B., s. 205. B. B., s. 227.] Section 219.

Inferior tenant paying into Court may deduct from rent.

189. When a holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and, that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Section 220.

Decree-holder may bid at sale; judgment-debtor may not.

190. (*1*) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a holding is sold under this chapter may, without the permission of the Court, bid for or purchase the holding. XIV of 1882. [C. B., s. 208 (1). B. B., s. 230 (1).]

(2) The judgment-debtor shall not bid for or purchase a holding so sold.

XIV of 1882. Section 221.

Operation of sections 313 and 326 of Code of Civil Procedure excluded.

191. Sections 313 and 326 of the Code of Civil Procedure shall not apply to any sale under this Chapter.

Section 222.

Registration of certain instruments creating incumbrances.

192. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any transferable holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act. III of 1877.

[C. B., s. 209. Expl. B. B., s. 2. Expl.] Section 223.

Notification of incumbrances to landlord.

193. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a transferable holding and creating an incumbrance on the holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the manner prescribed in Part VII of the Indian Registration Act, 1877, for the service of summons. III of 1877.

CHAPTER XVI.

SUMMARY SALE FOR ARREARS.

Sale of patní tenures.

Sale of patni tenures.

[D., § 185. C. B., s. 183. B. B., s. 147.] Section 42.

Right of proprietor to recover arrears from patnídár by summary sale.

194. If default is made in payment of the rent due in respect of a patní tenure held immediately from a proprietor, the proprietor

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(Chapter XVI.—Summary Sale for Arrears. Secs. 195—200.)

may, in addition to any other remedy given him by law, apply for the summary sale of the tenure in accordance with the rules contained in the following sections of this Chapter.

Bengal Regulation VIII of 1819, s. 8, cl. (2). Schedule III.

195. (*1*) On the first day of Baisákh, that is, at the commencement of the following year from that for which the rent is due, the proprietor may present a petition to the Collector, containing a specification of any balances that may be due to him on account of the expired year, in respect of all or any of the tenures described in the last foregoing section.

Application for sale at beginning of year.

(*2*) The petition shall then be stuck up in some conspicuous part of the Collector's office, with a notice that if the amount claimed is not paid before the first of Jeth following, the tenures of the defaulters will on that day be sold by public sale in liquidation.

(*3*) The proprietor shall cause a similar notice to be stuck up at his own sadr kachari and a copy or extract of such part of the notice as applies to the individual case to be sent and similarly published at the kachari at which the principal business of the tenure is transacted, or at the principal town or village on the land of the defaulter's tenure.

(*4*) The proprietor shall be exclusively answerable for the observance of the forms prescribed by this section.

196. (*1*) The notice required to be sent into the mufassal shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager, for the same; or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

Service of notice.

(*2*) If the people of the village object or refuse to sign their names in attestation, the peon shall go to the office of the nearest munsif, or, if there should be no munsif, to the nearest police-station, and there make voluntary oath of the same having been duly published. A certificate to this effect shall be signed and sealed by the said officers and delivered to the peon.

(*3*) If it appears from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the fifteenth day of the month of Baisákh, it shall be a sufficient warrant for the sale to proceed upon the day appointed.

Bengal Regulation VIII of 1819, s. 8, cl. (3). Schedule III.

197. On the first day of Kártik, in the middle of the year, the proprietor may present a similar petition, with a statement of any balances that may be due on account of the rent of the current year, up to the end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first day of Aghan, unless the whole of the advertised balance is paid before the date in question, or so much of it as will reduce the arrear, including any intermediate demand for the month of Kártik, to less than one-fourth or a four-anna proportion of the total demand of the proprietor, according to the kistbandí, calculated from the commencement of the year to the last day of Kártik.

Application for sale in middle of year.

198. (*1*) When a notice has been issued under the foregoing sections in respect of an arrear alleged to be due by a tenure-holder, the tenure-holder may, at any time before the day fixed therein for the sale of the tenure, present to the Collector a petition contesting the demand wholly or in part.

Proceedings when tenure-holder contests demand.

(*2*) The Collector on receiving a petition under sub-section (*1*) shall issue a summons to the proprietor requiring him to appear at a time and place specified therein, and show cause why the sale should not be stayed or the amount of the demand reduced, as the case may be, and shall, if practicable, hear the parties or such of them as appear, and determine the issues between them before the time fixed for the sale.

(*3*) If before the time fixed for the sale the Collector decides that no part of the arrear claimed is due, he shall dismiss the proprietor's application.

(*4*) If before that time he decides that any part of the arrear claimed is not due he shall reduce the demand accordingly, and his decision shall for the purposes of the proceedings under this chapter be conclusive.

(*5*) In cases not provided for by sub-sections (*3*) and (*4*) the tenure-holder's petition shall be dismissed, but such dismissal shall not affect his right to institute a suit to set aside the sale.

Bengal Regulation VIII of 1819, s. 14.

199. Except as provided by the last foregoing section, a tenure in respect of which a notice has been issued under the foregoing sections shall be sold on the day fixed by the notice unless before sunset of the previous day the amount of the demand, or, when that amount has been reduced under the last foregoing section, the reduced amount has been deposited in the Collector's office by the defaulter or some other person for payment to the landlord.

Tenure to be sold unless arrear deposited.

Bengal Regulation VIII of 1819, s. 10. Schedule II.

200. (*1*) At the time of the sale, the notice previously stuck up in the kachari shall be taken down, and the lots be called up successively in the order in which they may be found in the notice.

Forms to be observed in case of sale.

(*2*) A person shall attend on the part of the proprietor with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, with the receipt for, or certificate of, the notice directed to be published in the mufassal.

Bengal Tenancy Bill.

(Chapter XVI.—Summary Sale for Arrears. Secs. 201—205.)

(*3*) No lot shall be put up to sale until the statement produced has been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice has been read. The observance of these forms shall be recorded in a separate rubakari to be held upon each lot sold.

(*4*) If the sale is under a petition presented on the first day of Kártik the Kistbandí of the defaulter shall likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale; and the sale shall not take place unless this is ascertained.

(*7*) The proprietor shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, and the officer making the sale shall not be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Chapter.

Bengal Regulation VIII of 1819, s. 9. Schedule III.

201. (*1*) All sales of tenures under this Chapter shall be made in public kachari.

Mode of conducting sale.

(*2*) The land shall be sold to the highest bidder, and every one except the defaulter shall be free to bid.

(*3*) Fifteen per cent. of the purchase-money shall be paid immediately the lot is knocked down.

(*4*) The officer conducting the sale may refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours.

(*5*) If the fifteen per cent. is not paid in cash within two hours of the sale, or an equivalent amount in Government securities is not lodged, the lot shall be resold on the same day.

(*6*) If the remainder of the purchase-money is not paid by noon of the eighth day, notice shall be given of resale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the bázár of the sadr station of the district.

(*7*) The lot shall then be resold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per cent. already made, and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent sale; such deficiency to be levied by the process for the execution of decrees of the Civil Courts.

(*8*) The forfeited deposit shall be applied to defray the expenses of the sale, and the surplus shall be credited to Government.

Bengal Regulation VIII of 1819, s. 15. Schedule III.

202. (*1*) When the entire amount of the purchase-money has been paid in by the purchaser of a tenure under this chapter, the Collector shall grant him a certificate of the payment.

Title of purchaser.

(*2*) Thereupon the purchaser shall acquire the tenure with power to avoid, in manner prescribed by section 184 for the avoidance of incumbrances, all liens, sub-tenancies, easements and other rights or interests created on the tenure by the tenure-holder or any of his predecessors in interest or any person claiming under him or them, except—

(*a*) a right of occupancy;

(*b*) a right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; or

(*c*) any right or interest created under a power expressly conferred by the written instrument by which the tenure was created.

Bengal Regulation VIII of 1819, s. 15. Schedule III.

203. When the purchaser of a tenure under this chapter has obtained a certificate in respect of the same under the last foregoing section, and the transfer of the tenure to him has been registered under Chapter III, he may apply to the Collector to put him in possession of the tenure, and the Collector shall thereupon put him in possession of the same, and for this purpose shall exercise all the powers conferred by the Code of Civil Procedure on a Civil Court giving possession to a purchaser at a sale in execution of a decree.

Purchaser to be put in possession.

XIV of 1882.

Bengal Regulation VIII of 1819, s. 15. Schedule III.

204. When any person having in a tenure advertized for sale under this chapter an interest which would be voidable upon such sale deposits in the Collector's office the amount requisite under section 199 to prevent the sale, the provisions of section 188 shall apply, and if the person is a tenant inferior to the tenure-holder the the provisions of section 189 shall also apply, as if the tenure was a holding advertized for sale under Chapter XV, and the payment had been made into Court to prevent the sale.

Recovery of money deposited by person interested to stay sale.

Bengal Regulation VIII of 1819, s. 15. Schedule III.

205. (*1*) Any person aggrieved by a sale of a tenure effected under cover of the provisions of this chapter but not warranted by those provisions may institute a suit against the proprietor, at whose instance the sale was effected, to set aside the sale and recover compensation for the damage caused to him thereby.

Suit to set aside sale.

(*2*) The purchaser of the tenure shall be made a party to the suit, and shall, if the sale is set aside, be entitled to recover in the suit from the proprietor compensation for the damage (if any) suffered by him.

Bengal Tenancy Bill.

(Chapter XVI.—Summary Sale for Arrears. Secs. 206—209.)

(Chapter XVII.—Contract and Custom. Secs. 210—213.)

Bengal Regulation VIII of 1819, s. 17, cls. (5) and (6). Schedule III.

206. When a tenure has been sold under this chapter, any person having an interest therein which is under section 202 voidable by the purchaser may, within two months from the date of the sale, institute a suit against the defaulter to recover compensation for the damage caused to him by the sale:

Suit for compensation by person whose interest becomes voidable in consequence of sale.

Provided that no such suit shall be maintainable by any tenant inferior to the defaulter if at the time of the sale any arrear of rent was due from him.

Bengal Regulation VIII of 1819, s. 17. Schedule III.

207. (*1*) The proceeds of a sale under this chapter shall be dealt with as follows, namely:—

Disposals of proceeds of sales.

(*a*) One per cent. shall first be deducted from the proceeds, and shall be carried to the account of the Government, for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions of this chapter.

(*b*) The arrear on account of which the sale may have been made (with interest and all charges incurred in bringing the tenure to sale) shall next be paid to the landlord.

(*c*) The balance (if any) remaining after the payments prescribed by clauses (*a*) and (*b*) shall be forthwith sent by the officer conducting the sale to the Treasury of the Collector, to be there retained in deposit to answer the claims of persons who may obtain decrees for compensation under section 206, until the expiration of two months from the date of the sale, and if within that period any suits are instituted under that section, until all such suits have been finally decided.

(*d*) The balance retained under clause (*c*) shall be applied in the first instance to the payment of the amounts of the decrees (if any) passed against the defaulter under section 206, being distributed rateably among the decree-holders according to the amounts of those decrees, when it is insufficient to discharge those amounts in full.

(*e*) The residue (if any) of the said balance shall be payable to the defaulter.

(*2*) Any person interested in money deposited under clause (*c*) may withdraw the whole or any part thereof, on substituting Government securities, bearing interest, in lieu of the money so held in deposit; such securities to be taken at the rate of discount or premium of the day, as shown by the *Government Gazette* last received.

208. When any day specified in this chapter is a Sunday or holiday anything required or authorized under this chapter to be done on that day may be done on the next following day not being a Sunday or holiday.

Provision as to Sundays and holidays.

Sale of other tenures.

209. If provision is made by law for the registration in a public register of any tenures other than those saleable under the foregoing sections of this chapter, those sections shall, subject to such modifications as the Local Government from time to time by rule prescribes, apply to the tenures so registered.

Sale of other tenures

Modified application of Chapter to other registered tenures.

CHAPTER XVII.

CONTRACT AND CUSTOM.

210. The provisions of this Act in respect of the following matters shall take effect notwithstanding any contract to the contrary:—

Provisions to take effect notwithstanding contract.

(*a*) The acquisition of the status of a settled raiyat and of the occupancy-right (sections 24, 25 and 26).

(*b*) The incidents of the occupancy-right specified in section 31.

(*c*) The right of an occupancy-raiyat to demand a reduction of rent under section 51.

(*d*) The right of either landlord or tenant to demand a commutation of a produce rent under section 53.

(*e*) The protection afforded by the Act to a non-occupancy-raiyat and an under raiyat from ejectment except on specified grounds (sections 58, 59, 60 and 63).

(*f*) The right of a tenant to a reduction of rent on account of the diminution of the area of his holding (section 66).

(*g*) The right of the raiyat to make improvements and claim compensation for them (sections 88, 89, 90 and 93).

(*h*) The protection afforded to all tenants against ejectment except in execution of a decree (section 98).

211. Nothing in this Act shall be deemed to prevent a landlord in a permanently-settled area from granting a permanent mukarrari lease an any terms agreed on between him and his tenant.

Permanent mukarrari leases.

212. Nothing in this Act shall affect any contract for the reclamation of waste land.

Contracts for reclamation.

213 (*1*) Notwithstanding anything in this Act, a raiyat holding land of the kind known as chur or dearah,

Chur and dearah lands.

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(Chapter XVII.—Contract and Custom. Secs. 214—217.)

(Chapter XVIII.—Limitation. Secs. 218 & 219.)

(Chapter XIX.—Supplemental. Secs. 220—222.)

that is to say, land ordinarily liable to improvement or deterioration by fluvial action, shall not acquire a right of occupancy in the land until he has held the land for twelve continuous years; and, until he acquires a right of occupancy in the land, shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(*2*) But the Court may, on the application of either the landlord or the tenant, declare that any land has ceased to be chur or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

214. Nothing in this Act shall affect the conditions, customary or otherwise, under which land is held on either of the systems known as the "utbundi" system and the "hal-hasili" system.

Utbundi and halhasili systems.

ection 226.

215. Nothing in this Act shall affect any incident of a ghátwálí or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

Saving as to service-tenures.

ection 85.

216. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom.

Homesteads.

217. Nothing in this Act shall affect any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Saving of custom.

Illustration.

[C. B., s. 19. Expl. 4 (*f*), B. B., s. 19, Expl. 4 (*e*), proviso.] Section 4.

The custom that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom accordingly, wherever it exists, will not be affected by this Act.

CHAPTER XVIII.

LIMITATION.

[D., §§ 77, 78 & 79. C. B., s. 92. B. B., s. 98.] Section 224.

218. (*1*) The suits, appeals and applications specified in Schedule IV annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

Limitation in suits, appeals and applications in Schedule IV.

(*2*) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

219. Sections 7, 8 and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in section 218.

XV of 1877. [C. B., s. 93 B. B., s. 99.] Section 225.

Portions of the Indian Limitation Act not applicable to such suits, &c.

CHAPTER XIX.

SUPPLEMENTAL.

Penalties.

[B. B., ss. 91, 122.]

220. (*1*) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,

Penalties for illegal interference with produce.

(*a*) distrains or attempts to distrain the produce of a tenant's holding, or

(*b*) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or

(*c*) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

XLV of 1860.

(*2*) Any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (*1*) shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

Agents and representatives of landlords.

221. (*1*) Any appearance, application or act, in, before or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent of the landlord empowered in this behalf by a written authority under the hand of the landlord.

Agents and representatives of landlords. Section 229.

Power for landlord to act through agent.

(*2*) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent of the landlord empowered as aforesaid to accept service of or receive the same, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(*3*) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

222. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both

Joint-landlords to act collectively or by common agent.

Bengal Tenancy Bill.

(*Chapter XIX.—Supplemental. Secs. 223—228.*)

or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Powers of Revenue-officers.

Powers of Revenue-officers. [Section 227.]

223. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

Power to make rules regarding procedure and powers of officers.

(*a*) any power exercised by a Civil Court in the trial of suits;

(*b*) power to enter upon any land, and to survey, demarcate and make a map of the same; and

(*c*) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil.

Rules.

Rules. [Section 228.]

224. (*1*) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

Procedure for making, publication and confirmation of rules.

(*2*) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and in the case of rules made by any other authority, in the prescribed manner: Provided that every such draft shall be published in the official Gazette.

(*3*) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(*4*) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*5*) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

Provisions as to temporarily-settled districts.

Provisions as to temporarily-settled districts. [C. B., ss. 6, Excep., & 17, Exception B. B., ss. 6, Excep., & 16, Exception.] Section 26.

225. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a fixed rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

Saving as to land held in a district not permanently settled.

226. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a fixed rent, and while the lease or contract is in force—

[D., § 42] Section 121.

Power to alter rent in case of new assessment of revenue.

(*a*) land-revenue is for the first time made payable in respect of the land, or

(*b*) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

Rights of pasturage, &c.

227. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

[D., § 82. C. B., s. 3. B. B., s. 3. "Rent" and "land."] Section 230.

Rights of pasturage, forest-rights, &c.

Savings for special enactments.

228. Nothing in this Act shall affect—

Savings for special enactments. [D., § 2. C. B., s. 4. Report of Rent Commission, § 3. B. B., s. 4.] Section 4.

(*a*) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;

Savings for special laws.

(*b*) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue-authorities;

(*c*) any enactment relating to the avoidance of tenancies by a sale for arrears of the Government revenue;

(*d*) any enactment relating to the partition of revenue-paying estates; or

(*e*) any other special or local law not repealed either expressly or by necessary implication by this Act.

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(*Schedule I.—Repeal of Enactments.*)

SCHEDULE I.

(*See Section 2.*)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
VIII of 1793	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamíndárs, independent taluqdárs, and other actual proprietors of land in Bengal, Bihár, and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
XII of 1805	A Regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including the pargunas of Pattáspur, Kummadichour, and Bagrae, at present included in the zila of Midnapur.	Section 7.
V of 1812	A Regulation for amending some of the rules at present in force for the collection of the Land-revenue.	Sections 2, 3, 4, 26 and 27.
XVIII of 1812	A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	Preamble and Sections 2 and 3.
VIII of 1819	A Regulation to declare the validity of certain tenures, and to define the relative rights of zamíndárs and patní taluqdárs; also to establish a process for the sale of such taluqs in satisfaction of the zamíndár's demand of rent, and to explain and modify other parts of the system established for the collection of rents generally throughout Bengal.	The whole Regulation.

SCHEDULE I—*contd.*

Number and year.	Subject of Regulation.	Extent of repeal.
I of 1820	A Regulation for providing that all sales of certain taluqs, made answerable by sale for arrears of the zamíndár's rent, shall be conducted in the mode prescribed by Regulation VIII, 1819, for the sales therein described.	The whole Regulation.
XI of 1825	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In Clause 1 of Section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
VIII of 1865	An Act to amend the law for the sale of such under-tenures as by the title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of arrears of rent due in respect thereof.	The whole Act.
IV of 1867	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
VIII of 1879	An Act to define and limit the powers of Settlement-officers.	The whole Act.

Bengal Tenancy Bill.

(*Schedule II.—Extract from Preamble to Regulation VIII of 1819.*)

SCHEDULE I—*concld.*

Acts of the Governor General in Council.

Number and year.	Subject of Act.	Extent of repeal.
XXV of 1850	An Act for the forfeiture to Government of deposits made on incomplete sales of land under Regulation VIII, 1819, and Act IV, 1846.	So much as is unrepealed.
XXXIII of 1850	An Act for amending the forms necessary for the sale of patní tenures in Bengal.	The whole Act.
VI of 1853	An Act relating to summary suits for arrears of rent, to sales of pátní taluqs and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent.	The whole Act.
X of 1859	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

SCHEDULE II.

(*See Section 3 (16).*)

Extract from Preamble to Regulation VIII of 1819.

"In the exercise of the privilege * * * conceded to zamíndárs under direct engagements with Government, there has been created a tenure which had its origin on the estates of the Rájá of Bardwán, but has since been extended to other zamíndárís; the character of which tenure is, that it is a taluq created by the zamíndár, to be held at a rent fixed in perpetuity, by the lessee and his heirs for ever; the tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused from this obligation at the zamíndár's discretion; but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the zamíndár.

"By the terms also of the engagements interchanged, it is, amongst other stipulations, provided that, in case of an arrear occurring, the tenure may be brought to sale by the zamíndár, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand.

"These tenures have usually been denominated patní taluqs, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons who, on taking such leases, went by the name of darpatní taluqdárs: these, again, sometimes similarly underlet to be patnídárs; and the conditions of all the title-deeds vary in nothing material from the original engagements executed by the first holder."

Bengal Tenancy Bill.

(*Schedule III.—Forms of Receipt and Account.*)

SCHEDULE III.

FORMS OF RECEIPT AND ACCOUNT.

(*See Sections 70 and 71.*)

FORM OF RECEIPT.

1. Number
2. Year
3. Name of Village _____ Thánd _____
4. Tenant's name _____
5. Particulars of his holding (area, rent, &c.)—

Nukdi Bighás _____ Rs. _____

Bauli Bighás _____ Maunds _____ or Rs. _____

Sayer: Bunkur Rs. _____; Julkur Rs. _____; Phulkur Rs. _____

Government Cesses: Road Cess; Public Works Cess

6. Through whom paid _____
7. Date of payment _____
8. Amount paid (particulars on reverse) Rs. _____
9. Signature of Landlord or Authorized Agent

FORM OF RECEIPT.

1. Number
2. Year
3. Name of Village _____ Thánd _____
4. Tenant's name _____
5. Particulars of his holding (area, rent, &c.)—

Nukdi Bighás _____ Rs. _____

Bauli Bighás _____ Maunds _____ or Rs. _____

Sayer: Bunkur Rs. _____; Julkur Rs. _____; Phulkur Rs. _____

Government Cesses: Road Cess; Public Works Cess

6. Through whom paid _____
7. Date of payment _____
8. Amount paid (particulars on reverse) Rs. _____
9. Signature of Landlord or Authorized Agent

Section 69 of the Bengal Tenancy Act, 1884, provides as follows:—

"69. (*1*) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly."

Appropriation of payments.

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

Bengal Tenancy Bill.

(Schedule III.—Forms of Receipt and Account.)

Date of Payment.	Nukdi.		Baouli.	Sayer.		Cesses.	
	Current.	Arrear.	Current.	Current.	Arrear.	Current.	Arrear.

FORM OF ACCOUNT.

1. ear
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighas	Rate	Rs. A. P.
Nukdi			
Government Cesses			

	Bighas	Maunds	Rs. A. P.
Baouli			
Julkur			
Bunkur			
Phulkur			

	Maunds	Rs. A. P.
4. Demand of the year		
5. Balance of former years (Bakaya)		
		Rs. A. P.
6. Total demand (current and arrear)		
7. Paid each on account of { Current demand ...		
{ Arrear demand ...		
	Maunds	
8. Paid in kind		
		Rs. A. P.

9. Balance outstanding at end of year
10. Landlord's Signature

Bengal Tenancy Bill.

(Schedule III.—Forms of Receipt and Account.)

Date of Payment.	Nukdi.		Baouli.	Sayer.		Cesses.	
	Current.	Arrear.	Current.	Current.	Arrear.	Current.	Arrear.

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighas	Rate	Rs. A. P.
Nukdi			
Government Cesses			

	Bighas	Maunds	Rs. A. P.
Baouli			
Julkur			
Bunkur			
Phulkur			

	Maunds	Rs. A. P.
4. Demand of the year		
5. Balance of former years (Bakaya)		
		Rs. A. P.
6. Total demand (current and arrear)		
7. Paid each on account of { Current demand ...		
{ Arrear demand ...		
	Maunds	
8. Paid in kind		
		Rs. A. P.

9. Balance outstanding at end of year
10. Landlord's Signature

Bengal Tenancy Bill.
(*Schedule IV.—Limitation.*)

SCHEDULE IV.

LIMITATION.

(*See Section 218.*)

PART I.—*Suits.*

Description of Suit.	Period of Limitation.	Time from which period begins to run.
1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year .	The date of the breach.
2. For the recovery of an arrear of rent—		
(*a*) when the arrear fell due before a deposit was made on account of the rent of the same holding under section 73.	Six months .	The date of the deposit.
(*b*) in other cases .	Three years .	The last day of the Bengali year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails.
3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat.	Two years .	The date of dispossession.

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
4. From any decree or order under this Act to the Court of a District Judge or Special Judge.	Thirty days .	The date of the decree or order appealed against.
5. From any order of a Collector under this Act to the Commissioner.	Thirty days .	The date of the order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree, except where the judgment-debtor has by fraud or force prevented the execution of the decree.	Three years .	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.

Dissent.

I DISSENT from the report of the majority of the Select Committee on the Bengal Tenancy Bill.

The Committee commenced their sittings from the 21st November, 1883, and concluded their labours on the 13th March, 1884. They first met twice a week, and the members were required to give forty-eight hours' notice of amendments to be moved by them. From the 26th January the Committee resolved to sit thrice a week from 2 P. M. to 5-30 P.M.; and notices of amendments were required to be sent in to the Secretary the day before the meeting; and the amendments were circulated on the morning of the meeting. The new arrangement was proposed owing to the amount of work which remained undone, and also owing to the near approach of the Simla season; but I cannot refrain from remarking that, apart from personal inconvenience which it necessarily involved, it left the members scant time, scarcely ten hours, for the preparation of amendments, and six hours for their study, even if one gave his whole time to this work. I considered it my duty to protest against the arrangement, as it was neither fair to the individual members of the Committee, particularly to one in my position, being deprived of the opportunity of consulting those whose views I was understood to represent, nor to the momentous interests involved, but my protest was of no avail. The Committee certainly gave their best attention under the circumstances mentioned to the matters before them, and, as far as I was concerned, shewed me the utmost courtesy and consideration, but there was an unavoidable haste in disposing of momentous questions at the last moment, which could not but be regretted.

I wish the Rules of the Council had permitted the Committee to examine witnesses on practical questions connected with the Bill. The Committee, I doubt not, felt the necessity of this power. At the suggestion of His Honour the Lieutenant-Governor the Committee in an informal way examined some experienced zamíndárs on the subject of sub-letting.

The Bill has undergone material alterations at the hands of the Committee, but its cardinal principles remain unchanged. In some respects the position of the zamíndárs has been made worse than what it was in the original Bill. On some minor points even-handed justice has been done to both the zamíndár and the raiyat. The middle-man of course gains much more than what he has under the existing law, but the *bonâ-fide* cultivator, in whose behalf the greatest anxiety was evinced in the Committee, will, I fear, be practically worse off than he is at present. I do not now wish to discuss the whole Bill, and will not therefore enter into details on these points.

My objections to the Bill have been principally based on these grounds, firstly, because it goes against the ancient and existing land-law of the country, taking away on the one hand and conferring on the other rights which are inconsistent with that law; secondly, because it assumes a construction of the Regulations, which is opposed to judicial decisions, and takes for granted statements and facts not supported by evidence; thirdly, because it does not fulfil the primary object for which it was originally sought, namely, the simplification of the procedure for the settlement and realization of rent; fourthly, because it is calculated to sow dispute and dissension between the landlord and the tenant and flood the land with litigation to the detriment of the peace and welfare of the agricultural community; fifthly, because it will tend to reduce a large proportion of cultivating raiyats into agricultural day-labourers; and sixthly, because, by abolishing the freedom of contract between the landlord and the tenant, and by making the Court and the Revenue-officer the referee and arbiter in all matters of zamíndárí management and raiyatí action, it will neutralize the vital principle of self-reliance in the agricultural population and destroy its backbone, hamper the free operation of economic laws, and stereotype the patriarchal phase of Government with the aggravating evil of litigation at almost every step. These objections, which I took when the Bill was introduced last year,

have not, I am sorry to say, been removed by the alterations made by the Select Committee.

In specifying my objections to the Bill I do not propose to discuss it chapter by chapter or to traverse all its details. I propose to confine myself to the leading principles of the Bill and a few principal details.

Tenure-holders.

IN addition to the present class of persons who are recognised as tenure-holders, two other classes have been introduced, namely, (1) occupancy-raiyats who may sub-let more than half their holdings (section 37), and (2) raiyats, the area of whose holdings may exceed 100 standard bíghás, the whole or part of which is sub-let; in this case the tenant will be presumed to be a tenure-holder unless the contrary is shown (section 5, sub-section 5). In the case of the first-mentioned person, who is called a converted tenure-holder, all the incidents of the status of a tenure-holder will hold good except his liability to enhancement of rent. A tenant of the last-mentioned class will be entitled to all the rights and privileges of a tenure-holder. With regard to the first, I cannot understand with what justice is an occupancy-raiyat exempted from his obligations under the Bill as to pre-emption and distraint, and the zamíndár in so far placed in a worse position, because the occupancy-raiyat chooses to sub-let more than half his holding. The conversion of an occupancy-raiyat of a holding, the area of which exceeds 100 bíghás, into a tenure-holder, is, in my opinion, still more arbitrary. The status of a tenure-holder carries certain privileges, which the occupancy-raiyat does not possess, and for which, generally, a valuable consideration is paid to the zamíndár. For instance, a tenure is not, unfrequently, a permanent holding, heritable and transferable according to conditions of contract, and, under the present Bill, will enjoy favoured rates of rent and will be exempt from the rules of pre-emption and distraint. Surely, it cannot be contended that the conversion of the hundred-bighá jotedar into a tenure-holder under an edict of the legislature is consistent with the ancient or existing land-law of the country. In so far, it is a direct encroachment upon the rights of the proprietary class.

Then as to enhancement of rent of tenure-holders, section 8 of Regulation V of 1812 contained the following rule as to the rate at which auction-purchasers might collect:—"In the case of a dependant taluqdár, if the rent of the lands be computed according to the rates payable by raiyats or cultivators for land of a similar quality and description, a deduction shall be allowed from the gross rent in the adjustment of the jama of such dependant taluq at the rate of 10 per cent., for the taluqdár's profit or income, over and above a reasonable allowance for charges of collection according to the extent of the taluq." This section was repealed by Act X of 1859, which, however, contains no rule as to the grounds or limits of enhancement of the rent of tenure-holders and under-tenure-holders. But under case-law the rent may be enhanced up to the limit of the prevailing rate payable by the holders of similar tenures in the neighbourhood, or where no such prevailing rate is easily ascertainable, up to such a limit as shall not exceed 10 per centum of the collections after deducting the expenses of collection (*vide Field's Digest*). This case-law has been embodied in the present Bill, but with wide variations. For instance "customary rate" has been substituted for "prevailing rate", though the former is less easily ascertainable than the latter. Under the case-law the margin left to the tenure-holder as profit was not to *exceed* 10 per cent. of the collections, but under the Bill it is to be *not less than* 10 per cent. of the balance which may remain after deducting, not from the collections, which I take to be actual collections, but from the gross rents, not only the expenses but also "risks of collection". I may observe, I am not aware of any revenue-law under which an allowance is made for "risks of collection". Even the zamíndárs are not allowed any percentage for sums irrecoverable from raiyats on account of the Public Works and Road Cesses, though the liability is not their own, and though they collect the money for Government without any remuneration. It will be thus seen in what advantageous position is the tenure-holder placed under the present Bill compared with his position under the existing law. But this is not all. Under

the existing law the rent of a tenure-holder is liable to be enhanced to any reasonable amount, but under the Bill the enhanced rent is not to be more than double the previous rent; under the existing law the enhanced rent is to be paid at once, but under the Bill the Court may direct that the enhancement shall be gradual and payable in five years; under the existing law there is no limit of period as to enhancement of rent, but under the Bill the period is limited to ten years. I allude to the last three provisions to show that while so little consideration has been shown to the zamíndár, who is the proprietor of the land, and who is responsible for Government revenue under the stern sun-set law, so much tenderness has been shown to the tenure-holder who is generally looked upon as an idle factor. Surely this is not the way to discourage sub-letting.

Raiyats at fixed rates.

FOR the first time a legal presumption was introduced by Act X of 1859 to the effect that if the rent of a raiyat had not been changed for a period of twenty years before the commencement of a suit, it shall be presumed that the land has been held at that rent from the date of the Permanent Settlement. Whatever the necessity of such a provision at the time of passing Act X of 1859, that necessity, it cannot be denied, no longer exists. The raiyats have advanced in intelligence and independence, and the practice of granting printed rent-receipts has become common in many parts of the country. They do not, therefore, now stand in need of the same measure of protection against enhancement which was considered necessary in 1859. On the contrary, the effect of this provision has been disastrous to the zamíndár. The Hon'ble Mr. Reynolds drew attention to this point in his memorandum on the Bill of the Rent Commission. He quoted several opinions showing that the law has thrown "an unfair burden of proof upon the zamíndár", and that "it bears very hardly upon auction-purchasers who are often unable to get possession of the zamíndárí papers of their predecessors". This, Mr. Reynolds observes, is forcibly represented by the Collector of Purniyá, who believes that "there is hardly an estate in the whole of Bengal in which the value of the proprietary right has not suffered from this presumption". Without entirely abolishing the presumption Mr. Reynolds recommended that its operation should be confined to cases in which uniform payment could be proved for twenty years before the period when the presumption was first introduced into the law. He proposed a further concession in favour of auction-purchasers by providing that the presumption shall not be pleaded against them. In making these recommendations Mr. Reynolds remarked, "In determining the principle upon which the Legislature should act it would seem that the main point to be considered is the practical effect of the presumption which was introduced into the Act of 1859". Has this presumption generally operated to defeat an unjust claim on the part of the landlord, or to maintain the tenant in a status to which he was not rightfully entitled? It is believed that to this question there can be only one answer. In the great majority of the cases in which the presumption has been successfully pleaded, it has had the effect of conferring upon tenants, whose holdings really originated subsequently to 1793, a privilege which was intended to be confined to those who had held from the date of the Permanent Settlement. If this is really the case, it does not seem inequitable that the rule should be modified in the manner which has now been suggested.

Mr. Reynolds, I am sorry to say, has since changed his opinion, but the validity and justice of his opinion remain all the same. Relying upon it, I moved the amendment of the law to the effect originally proposed by Mr. Reynolds, but neither my motion nor a very much modified proposal to allow the twenty years to count from before the date of the passing of the present Bill was accepted by the majority of the Committee. The Bill thus describes the incidents of holding at fixed rates:

Section 23.—A raiyat holding at a fixed rent or rate of rent—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as a tenure-holder, and

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of contract between him and his landlord, liable to be ejected.

Coupling this provision with the twenty years' presumption referred to I cannot resist the conviction that it will tempt raiyats, whether entitled to the presumption or not, to declare themselves to be raiyats at fixed rates, and thus defraud the zamíndár of his just rights, who, if he be strong enough to assert them, must go through an expensive and harassing process of litigation to do so.

The intention of the Legislature in introducing this law of presumption was to protect raiyats holding from the date of the Permanent Settlement from arbitrary enhancement of rent by unscrupulous zamíndárs, but the continuance of this provision will, I fear, have the effect of converting by a side-wind every occupancy-raiyat into a *mukarraridár* or permanent tenure-holder. The consequence of this provision to good and bad zamíndárs is also striking. Where a zamíndár from a dislike of litigation, forbearance, or sympathy, has not enhanced the rent of a raiyat for more than twenty years, the raiyat, who has been careful enough to preserve his rent-receipts, will easily prove his case, while a zamíndár, who has shewn no such consideration or leniency, who has not scrupled to trouble and harass the raiyat with periodic enhancement, will necessarily have a decided advantage. The result will be that the good zamíndár will suffer and the bad zamíndár will gain.

Occupancy-raiyats.

THE occupancy-raiyat of the modern time is notoriously a creature of Act X of 1859, but I do not wish to revive the controversy on the subject. The twelve years' rule has been in existence for more than a quarter of a century, and it cannot be fair or just to disturb it now. The only fault found with the present law on the subject is that if a zamíndár were so disposed he could defeat the growth of the occupancy-right by shifting the raiyat from field to field. This practice, it is admitted, is not known in Bengal. But the Secretary of State, whilst strongly expressing himself in favour of the present twelve years' rule of continuous possession, has recommended the following modification. He would provide that "every resident raiyat shall have a right of occupancy in the land which he occupies and pays rent for, and that a resident-raiyat shall be one who, or whose ancestor, has occupied any land in the village or estate for twelve years." I do not at all subscribe to the equitableness of this provision. I do not think that it is fair or just that a squatter, because allowed to hold land in one part of an estate for twelve years, should, *ipso facto*, be entitled to hold land in all other parts of the estate as an occupancy or privileged raiyat. If in any part of the country the zamíndár has sought to nullify the growth of occupancy-right by shifting the raiyat from one plot of land to another, he has, it cannot be denied, acted within the law, and it would be as unreasonable to suppose that he has acted wrongly as to suppose that a tradesman is wrong in suing his debtor before the time, which would, under the law of limitation, bar his claim. As for preventing shifting, if it should be deemed absolutely necessary, I would have preferred to punish such an act by imposing a heavy penalty. But the Committee ruled, that the Right Hon'ble the Secretary of State for India having finally decided the question, they were not competent to re-open it, but I cannot help remarking that the Committee have gone further than the area covered by the Secretary of State's decision. The original Bill contained the following provisions regarding the acquisition of the status of a settled raiyat:—

Section 45.—Every person who, for a period of twelve years, whether before or after the commencement of this Act, has continuously held, as a raiyat, raiyatí land situate in any village or estate, shall, notwithstanding any contract to the contrary, and though the land so held by him at different times during that period may have been different, be deemed to become, on the expiration of that period, a settled raiyat of that village or estate.

Again:

Section 47.—Every settled raiyat of a village or estate holding after the second day of March, 1883, as a raiyat, any raiyatí land comprised in that village or estate shall, notwithstanding any contract to the contrary, be deemed to acquire or have acquired in that land a right of occupancy under the law for the time being in force.

At the instance of the Bengal Government the Committee have greatly extended the theory of the settled raiyat and created a new legal presumtion in his favour. Thus:

Section 25.—(1) Every settled raiyat of a village or estate shall have a right of occupancy in all land held by him as a raiyat in that village or estate;

(2) Every person who, being a settled raiyat of a village or estate, held land as a raiyat in that village or estate at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force.

Section 26.—(1) Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village or estate, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village or estate;

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

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

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

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

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

(7) If a raiyat recovers possession of land under section 96, he shall be deemed to have continued to be a settled raiyat, notwithstanding his having been out of possession for more than a year.

These provisions, I submit, are wholly outside the decision of the Secretary of State. That authority would in no case reduce the period of occupation from twelve years as provided in section 25, sub-section (2), nor did he recommend any legal presumption that every raiyat shall be considered a settled raiyat with right of occupancy unless proved to the contrary. The Secretary of State, it would be observed, would recognise a "resident raiyat" as an occupancy-raiyat, but the provisions quoted above do not recognise *residence* as a condition of accrual of occupancy-right. In the second place, the Secretary of State does not refer to possession by two or more co-sharers as a proof of occupancy-right derived by each such co-sharer. In the third place, he does not say that, even if a settled raiyat leaves his holding and pays no rent, he shall be considered a settled raiyat "for one year thereafter". On the contrary, he declares payment of rent as an inalienable condition of the right. And lastly, the Secretary of State no where says that if a raiyat once abandons a holding and afterwards recovers possession by payment of compensation, he shall be deemed to have continued to be a settled raiyat notwithstanding his being out of possession for more than a year. All these proposals, I repeat, are outside the sanction of the Secretary of State, and, as a matter of course, are so many encroachments upon the proprietary rights of the zamíndár.

It is observable that while a person holding land as a raiyat shall not be prevented from acquiring an occupancy-right in the land by reason that he is jointly interested in the land as proprietor or tenure-holder, and a person, though an *ijárdár* or farmer, shall not lose his right of occupancy in any land which he may subsequently hold in farm, it is declared that if the landlord acquires an occupancy-holding, the occupancy-right shall cease to exist (section 28). On what principle is this right denied to the landlord and conceded to the tenure-holder, who may be a permanent holder, and to the farmer, is not clear to me. It does seem strange and incomprehensible that the zamíndár alone shall not be allowed to enjoy the ordinary rights of a purchaser, simply because he happens to be a zamíndár.

On this point I venture to draw attention to the following remarks of **Mr. H. L. Dampier**, Senior Member of the Board of Revenue, deservedly regarded as a high fiscal authority in Bengal. He says: "It will be open to the whole world, with one exception only, to acquire by purchase or otherwise and to continue to hold certain rights described as occupancy-rights in a given piece of land. Such rights may be acquired and held by distant non-agricultural capitalists; by the zamíndárs of estates adjoining that within which the land lies; by the zamíndárs, resident or absentee, of the estate itself, if the land is included in a tenure; by any non-resident-holders of tenures, whether in the estate itself or in any other estate; by the very holders of tenures above the lowest under-tenure which includes the land. The one person who is debarred from holding this right, even if he acquires it by purchase from the person in whom it last vested, is 'the landlord', that is, by the definition the 'person or number of persons immediately under whom a tenant holds'; or, according to the proposal made by the Lieutenant-Governor towards the end of paragraph 14, the 'proprietor or permanent tenure-holder immediately under whom the raiyat holds'". **The justice of these remarks is so evident that I need say nothing by way of comment.**

Transfer of occupancy-holding and pre-emption.

THE question of transferability of the occupancy-holding has been discussed threadbare. I will not therefore repeat the arguments against it, which are already so well known. Suffice it to say that the measure will be equally injurious both to the zamíndárs and the raiyats; the former will have a valuable right unjustly taken away from them and be exposed to the intrusion of hostile persons into their estates, and the latter, under their peculiar circumstances, will, at no distant time, be reduced to the status of day-labourers by being sold out of their holdings, on which they depend for their subsistence. Neither under the Permanent Settlement Regulations nor under Act X of 1859 is an occupancy-holding transferable. When the question of the transferability of the occupancy-holding was first proposed by the Government of Bengal, the Government of India expressed its disapproval of it. The British Indian Association was invited to express its opinion on the subject, and it agreed to the legalization of the sale of the occupancy-holding in satisfaction of decree for rent, and suggested that, where a zamíndár might adopt this remedy, an occupancy-holding once so sold should be declared to have become a transferable tenure. The Lieutenant-Governor of the day practically adopted the suggestion. In a letter to the Government of India, dated the 2nd February, 1878, Mr. Secretary Reynolds wrote:

"The Lieutenant-Governor has with some reluctance withdrawn the proposal that the occupancy-right shall be generally transferable by private sale or other agreement. The weight of opinion is in favour of this proposal, as will be seen by a reference to the letter of the Board of Revenue, and His Honour is satisfied that such transfers would not have the bad effect which has been sometimes apprehended, and that they would not tend to transfer the land to classes whose ownership it might not be thought desirable to encourage. He believes that such a right of transfer would be much to the benefit of landholder and raiyat. It appears, however, that the landlord class are strongly opposed to the concession of any general right of transfer, and the Governor-General in Council has expressed serious doubts as to the expediency of including such a

provision in the Bill. The Bill, therefore, only proposes to recognize sales of occupancy-tenures at the request of the landlord in execution of decrees of Court, and to this the Lieutenant-Governor believes that no objection will be made."

The Bengal Government has since changed its opinion on the subject, and the concession made by the zamíndárs in 1878 necessarily goes for nothing. In the present Bill the transferability of the occupancy-holding is made general and absolute, subject to a rule of pre-emption. There is nothing in the Bill to prevent greedy land-jobbers or speculators from trafficking in land at the expense of the zamíndárs. As to right of pre-emption accorded to the zamíndár it will, I am afraid, prove in practice more a shadow than a substance. In the first place, the zamíndár will have to pay a consideration for land of which he is the proprietor, and which was never before transferable under the law. He will then have to run a competition with other bidders for the purchase of the land, and, if he cannot come to an agreement with the raiyat about the price, he must go through the expensive process of a reference to the Court for arbitrement, and must be prepared to pay the price adjudged by the Court. If the raiyats of a zamíndár in any considerable number become recusant and threaten him with the sale of their holdings, it will be difficult for him to keep out hostile people from the holdings unless he has a long purse to buy them up. Practically, therefore, this recognition of the transferability of the occupancy-holding may be worked by evil-disposed raiyats to the utter ruin of the zamíndár. It is noteworthy that while the zamíndár will have to go through the expensive process of obtaining the Court's decision as to price, the raiyat shall not be bound by that decision, for section 32, sub-section 4, says that when the zamíndár tenders a price to the raiyat, "the raiyat shall either abstain from selling the land or sell it to the landlord at that price". So the landlord will be entirely at the mercy of the raiyat.

Shadowy as the right of pre-emption will practically be, the amended Bill contrives to keep out of the purview of this provision all substantial raiyats, for under it the rule of pre-emption will not apply to tenure-holders, and all occupancy-raiyats who may sub-let more than half their holdings, or who may keep holdings of more than hundred bíghás in size part of which is sub-let, are, *ipso facto*, coverted into tenure-holders.

Enhancement of rent.

I HAVE already alluded to the question of the enhancement of the rent of tenure-holders, who are placed at a considerable advantage to the detriment of the zamíndár, a position which they had never before enjoyed under the Permanent Settlement Regulations or under Act X of 1859. With regard to the enhancement of the rent of occupancy-raiyats I wish to point out that at present the enhancement law has come to a dead-lock, and that one of the chief objects of fresh legislation is admitted to be to afford relief to the zamíndárs in this matter; but I am of opinion that the alterations made by the Committee will tend more to maintain the *status quo* than to secure justice to the landlord. In the first place under the existing law there is a perfect freedom of contract between the landlord and the tenant regarding enhancement of rent outside the Court, but under the Bill this freedom is entirely taken away, and it is provided that where the arrangement may be voluntary, the enhancement shall not exceed more than four annas in the rupee, that is to say, not more than two annas for a term of at least seven years, and if more than two annas, but not more than four annas in the rupee, for a term of at least fifteen years. Thus a serious disability is imposed upon the landlord in fixing rent outside the Court. When enhancement of rent is sought by suit, the grounds on which the enhancement may be applied for are thus set forth:

(*a*) That the rate of rent paid by the raiyat is below the prevailing rate payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity.

(*b*) That there has been a rise in the average prices of staple food crops in the locality or at the usual markets.

(*c*) That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(*d*) That the productive powers of the land held by the raiyat have been increased by fluvial action.

I am not prepared to say that the revised grounds will materially help the solution of the problem of enhancement. The first ground, "prevailing rate" is not made clear, and the same doubts and uncertainties that now hang round it remain unremoved. An attempt was made to explain it, but it was opposed by the Bengal Government. The second ground will, I am afraid, prove fictitious, for knowing as the Committee do, how unreliable are the price-lists prepared by Government officers, they cannot deny that it will be difficult to obtain reliable data for striking average prices, particularly, "in the locality or at the usual markets"—who is to fix the usual markets? The third ground will be made practically inoperative by the conditions which follow. As for the fourth ground, even if it be fairly worked, its application will be exceptional.

The rules providing for enhancement enquiries by the Revenue-officer will practically leave the whole matter to the discretion of the Revenue-officer. For instance, in ascertaining the prevailing rate, the Revenue-officer is directed to make a local enquiry, but he is not told on what principle he is to find the prevailing rate, and the result will be diversity of practice under diverse officers. In working out enhancement on the ground of rise in prices it is provided that—

(*a*) The Court shall have regard to the lists of prices periodically published under the authority of the Local Government, and shall compare the average prices during the quinquennial period immediately preceding the institution of the suit with the average prices during such other quinquennial period as it may appear equitable and practicable to take for comparison.

(*b*) The Court shall not enhance the rent so that the enhanced rent exceeds the previous rent by more than four annas in the rupee.

(*c*) Subject as aforesaid, and subject also to section 48, the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last quinquennial period bear to the average prices during the previous quinquennial period taken for purposes of comparison.

In carrying out the above provisions much will depend upon the price-lists, and, as I have already stated, those that are published in the *Calcutta Gazette* by Government are wholly unreliable. They are collected by the police, who cannot be expected to be over-scrutinous. They are not tested by any responsible agency, not to say that the wholesale and retail prices being generally mixed up, no fair average can be based upon them. Unless special care be taken to prepare the lists—and this remark applies to future lists—they cannot and ought not to be accepted by courts of justice as good and valid evidence. The question still recurs—how will the lists of past prices be prepared?

It will be observed that the value of all crops must be reduced to the price of paddy in Bengal, and that of Indian corn, barley and wheat in Bihár. The specification of the staple food-crops is left to the discretion of the Local Government, which may from time to time vary them. No allowance is made for valuable crops, such as tobacco, sugarcane, mulberry, potato, jute, &c. This rule is evidently founded on the principle of the Tithes Commutation Act of the United Kingdom. There is, however, I venture to submit, no fair analogy between tithes in England and rents in Bengal; for the former represented a fixed share or a tenth part of the crop, while the latter, though originally based on a share of the produce, have now greatly receded from the old standard. An English tithe is not susceptible of enhancement, whereas the Bengal money-rent is legally declared to be liable to enhancement. The question, therefore, arises whether the principle, which is held equitable in the commutation of tithes, would be fair and equitable in the enhancement of a money-rent? As far as I can judge, the difficulties in carrying out the principle will by no means be less than what they are under the existing law. As for enhancement on the ground of landlord's improvement, it is so much handicapped by restrictive conditions, that it will, I fear, prove an economic anomaly. After enumerating the circumstances which the Court should take into consideration in ordering enhancement on this ground, section 46 says that the Court shall

consider the ability of the land to bear a higher rent. With such an uncertainty hanging over him, will any proprietor with two grains of common sense to rub against one another undertake any improvement?—if he cannot be sure of any return for his money, naturally, he wont lay out money. There are two other points connected with this subject. It was settled in previous correspondence between the Government of Bengal and the British Indian Association that enhancement of rent in any case should not be more than double the present rent, and that every enhancement of rent shall have a currency of ten years. These rules were embodied in the original draft Bill, but, at the instance of the present Bengal Government, both the rules have been altered. It is now declared that, when enhancement is sought on the ground of prevailing rate, the rent shall not exceed the previous rent by more than eight annas in the rupee or fifty per cent., and that, when it is sought on the ground of rise in prices, the enhanced rent shall not exceed the previous rentby more than four annas in the rupee or twenty-five per cent., and that every enhancement shall have a currency of fifteen years. It would be thus seen that there is no finality in the decision of Government, and that the more is conceded by the zámíndárs the more is demanded from them.

It is observable that where the enhancement is sought on the ground of the present rent being below the "prevailling rate", common sense suggests that the rent should be raised to the limit of the "prevailing rate"—it is not clear why a maximum limit of fifty per cent. should be fixed in such a case. Again, where the enhancement is sought on the ground of rise in prices, and the increase is to be given according to the rule of proportion, it is not equitable that there should be again a maximum limit of twenty-five per cent.

Commutation of produce-rents into money-payments.

THIS part of the Bill affects Bihár more than Bengal, and as my honourable collegaue, His Highness the Mahárájá of Darbhangá, will doubtless comment upon it, I need not say much upon it. I may, however, observe that the principle upon which the commutation is directed to be made, namely, (*a*) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity, and (*b*) the average value of the rent actually received by the landlord during the preceding ten years, will tend to lower the present rents. I should add, that when the Bill was introduced, a distinct assurance was given that the present rents will not be lowered.

Non-occupancy-raiyats.

BOTH under the Permanent Settlement Regulations and Act X of 1859 it was left entirely to the discretion of the landlord to deal with the non-occupancy-raiyat, who is none other than the tenant-at will. But the relations between the landlord and non-occupancy-raiyat are materially altered by this Bill. Nothing will prevent the non-occupancy-raiyat from acquiring the occupancy-right, and, as already observed he will get the benefit of the legal presumption of a settled raiyat, if he can manage to scatter a few seeds once upon a plot of ground; then when he will be first let in he will be liable to pay such rent as may be agreed on between himself and his landlord, but no enhancement will be allowed except by registered agreement, and even when an agreement may be tendered by the landlord to the raiyat, the latter may refuse it, and the former will then be driven to the necessity of instituting a suit to eject him. The Court shall then determine what rent is fair and equitable for the holding, and if the raiyat agrees to pay the rent so determined, the landlord, under order of Court, shall be bound to give him a lease for five years, and if before the termination of the lease the raiyat shall have acquired a right of occupancy, he will be entitled to all the rights and privileges of an occupancy-raiyat. The non-occupancy-raiyat will thus be one in name; the landlords present right to deal with him at his discretion is entirely taken away, while the freedom of contract is disallowed and the landlord is compelled to give a judicial lease for five years. I should observe that in consequence of the introduction of the judicial lease,

the original provisions regarding compensation for disturbance have been omitted. These provisions embodied a new-fangled idea not known in this country, and would, if retained, have proved a new apple of discord. But the substitution of the judicial lease for five years involves a great injustice to the landlord, who is tied hand and foot by the Court in a matter in which he has always enjoyed perfect independence of action. The raiyat, in whose favour the judicial lease is ordered, may be most obstreperous and tribulent, may by his bad advice be tainting the whole flock around him, and may thus prove most mischievous, not to say that the landlord, if he settles the land with another raiyat, may get better rent and perhaps better security for payment of rent. But the judicial lease will give him no such option or advantage. I cannot help thinking that the provisions relating to non-occupancy-raiyats involved a further invasion of the proprietary rights of the landlord, and that in favor of a class of tenants who are not attached to the soil, and have, therefore, no manner of moral claim upon the consideration of the landlord.

Sub-letting and sub-raiyats.

ONE principal defect of the Bill, as introduced, was that, while it seriously curtailed the rights and privileges of the zamíndár, it did practically little for the good of the *boná-fide* cultivator, whose labour constituted the wealth of the country and fed a whole host of proprietors and sub-proprietors including the Government, as the representative of the public. The position of the middleman had been greatly strengthened, while the sub-raiyats, usually the actual cultivators of the soil, were left to the tender mercies of the middlemen. The invidiousness of this condition was fully realized by the Committee, and they proposed various devices for bettering the position of the sub-raiyats. Accordingly, restrictions have been proposed in the Bill on sub-letting, but I doubt whether these provisions will work. In the first place, if an occupancy-raiyat sub-lets more than half his holding, he shall on registration of the same be converted into a tenure-holder. Considering the decidedly advantageous position of the tenure-holder, this will operate as a premium on sub-letting instead of as a repressive measure. In the second place, if an occupancy-raiyat sub-lets, his sub-lease shall not be valid for a term exceeding seven years, and this provision will have a retrospective effect. Surely this will be no loss to the sub-lessor, for the shorter the lease, the greater his gain. In the third place, the landlord of a sub-raiyat shall not, in the case of a registered lease, be entitled to recover rent more than fifty per cent. of what he himself pays, and in any other case not more than twenty-five per cent. I do not understand how this rule will work, where there is a long chain of middlemen, for instance in Backergunge, where there are thirteen grades of middlemen. Will each middleman have the right to claim from his sub-raiyat fifty per cent. in excess of what he pays to his own landlord? What would then be the position of the last link in the chain —of the men who immediately cultivates? And in the fourth place, a sub-raiyat shall not be liable to be ejected by the landlord except at the end of an agricultural year and after a written notice to quit, to be served not less than six months before the expiration of that year. My own impression is that there will be frequent disputes between the superior raiyat and the sub-raiyat as to whether the former has sub-let more than half his holding, and the result will be either silent suffering on the part of the sub-raiyat or frequent litigation. Then, as far as I can judge, the limitation of rent under section 62 will apply only in such cases in which a superior raiyat may sub-let more than half his holding; he will, therefore, studiously keep himself under this limit and thus avoid the clutches of the law. Furthermore, it will be nobody's interest to bring to Court the superior raiyat contravening the law, for no penalty attaches to breach of law. The superior raiyat will make it a point not to let his land to any raiyat who will not accept his own terms, and when a sub-raiyat accepts those terms, he will not seek the benefit of the law; another raiyat, a third party, may wish to get the land on the terms prescribed by law, but he will have no *locus standi*, if he be not admitted by the superior raiyat. So that the new provisions restricting sub-letting will either prove a dead-letter or give rise to endless litigation.

Improvements.

THE chapter on improvements introduces an alteration in the relations between the landlord and tenant consistent with neither the existing law nor custom. At present improvements are generally made by the landlords, and where they are made by tenants, they are effected with the consent and sanction of the landlord, but this chapter declares that (1) where a raiyat holds at a fixed rent his landlord shall not be entitled to prevent him from making any improvement in respect of his holding, (2) where a raiyat has an occupancy-right he shall have the prior right to make the improvement unless it affects another holding or other holdings under the same landlord, and (3) where a non-occupancy-raiyat desires that a certain improvement should be made in his holding, he shall serve a notice on the landlord calling upon him to make the improvement within a reasonable time, and if the landlord is unable or neglects to comply with his request, he may make the improvement himself. The whole theory of these provisions ignore the proprietary right of the landlord, and assigns to the Collector the task of deciding as to who has the right to make improvements. If public policy requires that the raiyat should be encouraged to make improvements, surely the first option ought to be given to the landlord to effect them. From an economic point of view, the landlord, having larger capital, is in a better position to carry out improvements, but no facilities are offered to him for this purpose. Even a return in the shape of increased rent is not assured to him for his outlay of capital on improvements, for it will be in the discretion of the Court not to allow an enhancement, if the court thinks that the land cannot bear enhanced rent. The inevitable result of these rules, I am afraid, will be to throw back all improvements. The soundness of the policy, which expects improvements from those who have not the means to make them, and to deter those who can, is unintelligible to me. I suggested that facilities should be given to the landlord to acquire land for purposes of agricultural experiments, model-farms, &c., but my proposals were not accepted. I was referred to an amendment of the Land Acquisition Act.

Management of joint estates.

THE Bill gives power to the District Judge, on the application of the Collector or of any person interested, even a squatter, to deprive co-owners of an estate or tenure of the right of management thereof, if it appears to him that there has ensued or is likely to ensue (*a*) inconvenience to the public, or (*b*) injury to private rights. I shall take the last point first. I at once admit that hardships and harassment may be caused to raiyats in consequence of disputes among co-owners and the absence of a common manager, but this point has been met by the Committee in the provisions made for deposit of rent. Section 73, clause (*c*), says that a tenant may deposit rent when the rent is payable to sharers jointly, and the tenant is unable to obtain the joint receipt of these co-sharers for the money, when no person has been empowered to receive rent in their behalf. Besides, the co-sharers cannot apply for distraint or sue for enhanced rent unless they make the application or institute the suit jointly or through a common manager. It will be thus seen that the Bill effectually removes all reasonable complaints of raiyats who are tenants of joint estates. As for inconvenience to the public from the joint management of estates, I confess, I do not clearly understand it. If, for instance, the co-parceners default in the payment of revenue, their estates are liable to sale; if they transgress law or fail to comply with public requisitions, their responsibility is easily traceable under the operation of the Bengal Registration Act, and they are liable to punishment. It is not therefore clear why they should be deprived of the management of their own property because the Collector or Judge thinks that it causes "inconvenience to the public". I submit it would be contrary to sound public policy to remove all incentives to exertion and improvement from landed proprietors and capitalists by delegating the management of their property to others on pleas which have no existence in fact.

Record-of-rights, settlement of rents, tables of rates and record of proprietor's private lands.

THE chapters relating to these subjects are doubtless in accordance with the modern ideas of land administration in periodically settled India, but as far

as Bengal is concerned, the rights and interest of different parties are generally well defined, and where there might be disputes between landlords and tenants in matters dealt with in these chapters, common sense would suggest that the application of the law should be left to the self-interest of the parties concerned. But the essence of these chapters is that while liberty is accorded to both landlord and tenant to move the machinery provided in them, the Local Government is empowered to bring of its own motion the machinery into action. The application of the provisions contained in these chapters will, I fear, plunge the country into a flood of litigation, stir up the worst passions of both the landlord and the tenant, open a wide door to perjury and forgery, give rise to endless corruption among the subordinate *amlah*, and throw the agricultural population into a sea of trouble, expense and loss. This was the lesson taught by the Revenue Survey. Of course, when the parties will themselves apply for the enforcement of the provisions under notice, it will be their own lookout, but I do not see any good or valid reason why the Government should, without any application from the parties, step in and inflict upon the country the evils pointed out above The work contemplated cannot, I fear, be accomplished in two or three generations to come, and for all this time will run the festering sore indicated above. If the record-of-rights were confined to those cases in which auction-purchasers at revenue or summary sales may not receive *jamabandí* papers for their guidance, if the settlement of rents were made applicable to those cases in which the raiyats might combine and withhold payment of rent and agrarian outrages might take place, and if the record of proprietor's private lands were limited to those cases in which the proprietor himself made the application, in all these cases, on the application of parties, it would be reasonable and fair; but to give the wide scope which has been given in these chapters by vesting the Government with unlimited discretion is not only not warranted by the necessities of the case, but will be followed by evils which will be highly detrimental to the best interests, peace and happiness of the agricultural population. As regards tables of rates, the enquiries which have been made on the subject have made it clear that in most parts of the country they are not practicable, that there are so many variations in rates of rent, sometimes one hundred and odd in a village, owing to various causes, historical, personal, economical and social, that it is hopeless to discover any typical or uniform rate, or what was formerly called *Pargana* rate in any given area. And yet power is taken by the Local Government to order preparation of tables of rates for special areas and to charge landlords and tenants with the cost of this work, though they may not in the least benefit by it. In the same way the expenses which may be incurred by enforcing the provisions relating to record-of-rights and settlement of rents, will be cast upon the landlords and tenants, though no application had been made by them. Thus a new cess will be imposed upon the land for purposes of proceedings which may do more harm than good to the landed classes.

As regards the record of proprietor's private lands which go by the name of *khámár*, the definition given is wholly opposed to what is contained in the Permanent Settlement Regulations and excludes all waste lands. Section 138 declares:

Section 138.—(1) The Revenue-officer shall record as a proprietor's private land—

(*a*) land which is proved to have been cultivated as khámár, zírat, sír, nij, nij-jot, or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village custom as proprietor's khámár, zírat, sír, nij, nij-jot, or kamat.

(2) In determining whether any other land ought to be recorded as a proprietor's private land the officer shall have regard to local custom and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

Section 37 of Regulation VIII of 1793 thus describes *khámár* lands:—

Section 37, Regulation VIII of 1793. The above exception [exclusion of lakhiraj lands from the general assessment], however, is not meant to include the *Malikanah* lands in Bihár, or the *nankar, khámár, nij-jot,* and other private lands of the zamíndárs and independent talukdárs, or other actual proprietors of land in Bengal and Mednípur, &c.

It will be seen by comparing the language of the Regulation with that of the Bill that no such condition as cultivation for twelve continuous years was attached to the zamíndár's *khámár* lands under the old law. As for waste lands, it is notorious that they were given to the zamíndár to enable him to recoup the loss which inevitably fell upon him under the crushing assessment of the Permanent Settlement.

Distraint.

THE law of distraint is generally regarded as an important and potential auxiliary in realising rent. In Bíhár, I understand, it is largely resorted to. The essence of the present law of distraint is, that the process is a sharp and quick remedy, and that the whole responsibility rests upon the landlord who is liable to heavy penalties in case of abuse of power. Under the Bill distraint is made a process of Court; it is clogged with various restrictions, and by the time the order may be executed the crops may be off the field. The procedure is so much elaborated that it will no longer prove the prompt remedy, which the distraint law ought to be, while the expense and harassment will be such as to compel the landlord to forego it altogether. I am inclined to think that the law of distraint, as provided in the Bill, will remain a dead-letter, and thus the only facility which the landlord possesses at present for realising his rent, quickly, will be taken away from him.

Judicial Procedure.

I NEED not repeat that the Government has over and over promised to simplify the procedure for recovery of rent. It has recognised its obligation in this respect from the time of the Permanent Settlement to this day. One of the primary objects of the present Bill from its first inception has avowedly been the simplification of the procedure for the realisation of rent, and the Committee in deliberating upon the subject fully admitted it, but the practical result of their deliberations, I am constrained to say, is disappointing. I submitted three schemes on the subject: (1) the Patní Procedure, (2) the Certificate Procedure now applicable to Government and Wards Estates, and (3) a modification of the present procedure. I set out below the details of the third scheme.

The zamíndár or rent-receiver in instituting a suit for arrear of rent should make out a *primá facie* case by filing necessary papers such as *jama-wásil-bákí* papers and counterfoils of receipts and giving necessary evidence.

The Court should then issue summons. In order to obviate the usual complaint of non-service of summons, I would suggest a provision to the following effect:—

"The summons shall be ordinarily served personally or by a registered postal cover. If for any reason the summons cannot be served personally on the defendant, it shall be affixed at his usual place of residence in the village in which the land is situate, or within five miles thereof. The notice may be served by affixing it at the mál-kacharí of such land, or on the land for which the arrear is due or other conspicuous place thereon, or at the village chauki or chowpal, or at some other conspicuous place in the village in which the land is situate. An attestation of service should be taken from the village chaukídár, village mandal, or some two respectable residents of the village, or rural sub-registrar, as the case may be."

The order to prevent abuse, at least two of the abovementioned processes should be observed in every case; and with this safeguard the plea of non-service of summons should not be accepted by the Court as a good ground for re-opening or retrying a case which has been decided *ex parte*.

The summons should contain a notice that unless the defendant appears within one week from date of service, the Court shall pass a decree for the amount claimed and order immediate execution. The Court should be required to examine the defendant within eight days from the date he enters appearance and give notice of the day appointed to the plaintiff. The defendant should be required to file all documentary proofs and bring his witnesses in support of his pleas on the day of his examination. If the nature of the case admits of the immediate disposal of the suit, the Court should do so; or if the case be contested, it should on that day settle the issues in the presence of both parties and fix another day for hearing and final determination of the suit, not exceeding a fortnight from the date of examination of the defendant.

As regards execution, if the defaulter be a tenure-holder or occupancy-raiyat, his tenure or holding should be sold in execution. If he be a non-occupancy-raiyat, he should be evicted.

No appeal should be admitted unless the amount decreed was deposited. The rent-receiver should be allowed to take out the deposit on giving proper security.

This scheme seemed to enlist the sympathy of many of my honourable colleagues in the Committee, but, to my misfortune, the majority have not been able to accept it. They say—

> For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent-suits, we are unable to suggest anything of importance in this direction which would not involve a serious risk of failure of justice. In particular, while we are anxious to facilitate the service of summons and the proof of such service, we are unwilling to give any presumption of law against an absent defendant except on adequate proof of such service.

The Committee have, however, introduced the following new provisions :—

> We have, however, with a view to avoiding, as far as possible, the complication and delay which arise from questions as to the landlord's title being raised in rent-suits, made an important amendment in the section (164) which requires a tenant admitting that rent is due from him, but pleading that it is due not to the plaintiff but to a third person, to pay the amount into Court. Our object is to force the issue of disputed title to be raised separately and independently of the rent-suit, and we have therefore provided that the Court shall, on the money being paid in, cause notice of the payment to be served on the third person, and unless he, within three months, institutes a separate suit against the plaintiff and obtains an order restraining the payment of the money, it will be paid out to the plaintiff on his application.

A much more efficacious remedy, in my humble opinion, would have been, as I pointed out in Committee, to declare forfeiture of right of the raiyat in case his disclaimer of the title of his landlord was disproved in Court. The modifications proposed by the Committee would only multiply wheel within wheel, a title-suit in an arrear-suit, and thus vastly delay the realization of rent instead of facilitating it.

The Committee propose to give power to the High Court to make modifications in the ordinary procedure, if necessary, in applying it to the trial of rent-suits. This, to my mind, is tantamount to shirking the question. Surely the legislature, which has enacted the code of procedure, is competent to modify it for the purpose of expediting the trial of rent-suits.

I do hope that when the Committee meet in November next, they will be able to see their way to an efficacious simplification of the present procedure for the realisation of rent, which is a crying grievance with the landlords, and in consequence of which they are not unfrequently heavy losers in meeting the Government demand of the revenue and the cesses. If there is a consensus of opinion on any one point connected with the rent-law, it is on this, and it would be a scandal if, while the whole law is being overhauled, no substantial aid be given to the landlords to realize their just dues.

Freedom of contract.

UNDER this Bill, freedom of contract between the landlord and the tenant is practically abolished. The matters which are placed beyond the reach of contract are thus specified by the Committee :—

(*a*) The acquisition of the status of settled raiyat and of the occupancy-right (sections 24, 25 and 26).

(*b*) The incidents of the occupancy-right specified in section 31.
(*c*) The occupancy-raiyat's right to demand a reduction of rent under section 51.
(*d*) The right of either landlord or tenant to demand a commutation of a produce-rent under section 53.
(*e*) The protection afforded by the Bill to a non-occupancy-raiyat or an under-raiyat from ejectment except on specified grounds (sections 58, 59, 60 and 63).
(*f*) The right of a tenant to a reduction of rent on account of a diminution of the area of his holding (section 66).
(*g*) The right of a raiyat to make improvements and claim compensation for them (sections 88, 89, 90 and 93).
(*h*) The protection afforded to all tenants against ejectment except in execution of a decree (section 98).

I have, in my remarks on the introduction of the Bill, strongly protested against this retrograde move. The Permanent Settlement Regulations not only recognized but openly encouraged freedom of contract, and Act X of 1859 did the same. I cannot conceive that if the raiyat can be fairly considered a free agent in mortgaging or selling his hearth and home or his agricultural land, in disposing of the produce of his field, or engaging his labour and fulfilling a thousand other obligations of every-day life, why he should be considered incompetent to enter into contract with his landlord. I would strongly urge the re-consideration of this question.

Civil Courts and Revenue-officers.

THE jurisdiction under the Bill is divided between the Civil Court and the Revenue-officer. The large powers which have been conferred upon the Revenue-officer at the instance of the Bengal Government are, I hope I am mistaken, evidently intended to reduce the land administration of Bengal to the same dead-level system which prevails in Northern India, and which has so notoriously hampered the action of capital and clogged the springs of industry in that part of the country. Whether I refer to the provisions for the commutation of produce-rents into money-payments, to record-of-rights and settlement of rents, to preparation of tables of rates, to superintendence of contracts between the landlord and the tenant, the fixing of standard poles for measurement, the preparation of price-lists, or the like, the Revenue-officer has been made the fulcrum on which no small portion of the structure of the Bill rests. I would not object if the Revenue-officer were made only an executive or administrative officer, but as he has been vested with judicial functions, the objection becomes serious. Nothing, I conceive, can be more injurious to the interests of justice than a system which will place a judicial officer at the beck and nod of the Executive Government. On this point, I would reproduce the enlightened and wise remarks of Lord Cornwallis contained in the preamble to Regulation. II of 1793 :

> All questions between the Government and the landholders respecting the assessment and collection of the public revenue, and disputed claims between the latter and their raiyats (tenants), have hitherto been cognizable in the Courts of Maal Adawlut, or Revenue Courts. The collectors of revenue preside in these Courts as judges, and an appeal lies from their decision to the Board of Revenue, and from the decrees of that Board to the Governor General in Council in the Department of Revenue. The proprietors can never consider the privileges which have been conferred upon them as secure, whilst the Revenue-officers are vested with these judicial powers. Exclusive of the objections arising to these Courts from their irregular, summary, and often *ex parte* proceedings, and from the collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties, it is obvious that, if the regulations for assessing and collecting the public revenue are infringed, the Revenue-officers themselves must be the aggressors, and that individuals who have been wronged by them in one capacity can never hope to obtain redress from them in another. Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants. Other security must be given to landed property and to the rights attached to it, before the desired improvements in agriculture can be expected to be effected. Government must divest itself of the power of infringing, in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders. The Revenue-officers must be deprived of their judicial powers. All financial claims of the public, when disputed under the Regulations must be subjected to the cognizance of Courts of Judicature, superintended by judges who, from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants. The collectors of the revenue must not only be divested of the

powers deciding upon their own acts, but rendered amenable for them to the Courts of Judicature, and collect the public dues, subject to a personal prosecution for every exaction exceeding the amount which they are authorized to demand on behalf of the public, and for every deviation from the regulations prescribed for the collection of it. No power will then exist in the country by which the rights vested in the landlords by the Regulations can be infringed, or the value of landed property affected. Land must, in consequence, become the most desirable of all property, and the industry of the people will be directed to those improvements in agriculture, which are as essential to their own welfare as to the prosperity of the State.

The broad views which were expressed by the Government in 1793 apply with ten-fold force in 1884.

Patní tenures.

THE zamíndárs, not without reason, object to the incorporation of the Patní law in this Bill. They hold that every word of that law has during the last 65 years received an accepted and authoritative meaning; that it is well understood by the zamíndárs, the patnídár, the Court and the amlah; that to modernise the language will be to disturb the recollections and traditions of more than three scores of years, and that it is therefore highly desirable to leave the Patní law as it is, text and construction, on the principle of letting well alone. I concur in this opinion and would leave out the Patní chapter from this Bill.

I have hastily drawn up my principal objections to the leading principles of the Bill. I have not had time to comment on details. I propose to bring them forward when the Committee meet in November next.

KRISTODÁS PÁL.

The 14th March, 1884.

Memorandum of dissent from the finding of the majority of the Select Committee on certain provisions of the proposed Tenancy Bill.

1. Chapter IV of the revised Bill provides that a raiyat holding his land at a fixed rate of rent shall be—

(*a*) subject to the same provisions with respect to transfer, succession, &c., as a tenure-holder; and

(*b*) liable to be ejected from his holding on the ground of his having broken the terms of a written contract between him and his landlord on breach of which he is liable to be ejected.

The occupancy-raiyat claiming to hold his land at a fixed rate of rent is, in respect of his holding, placed in a more advantageous position than the ordinary occupancy-raiyat—

(*a*) by the landlord being debarred from pre-empting should the raiyat transfer his holding to a third party;

(*b*) in not being liable to be ejected should he use his land in such a way as to render it unfit for the purposes of his tenancy.

The majority of the Committee are of opinion that the incidents attached to an occupancy-holding the rent of which is fixed should be different from the incidents attached to an ordinary occupancy-holding; from this I dissent.

If the landlord is to be allowed the right to pre-empt in the one case, he should be allowed to do so in the other; if the raiyat is to be subject to eviction for rendering his land unfit for the purposes of the tenancy in the one case, he should be liable to be evicted in the other.

Every argument that can be adduced in favour of its being permitted in the one case would apply equally in the other.

Pre-emption is, I believe, an off-shoot of Muhammadan law; when the right to pre-empt is claimed among Hindús in Bihár, it is governed by custom.

The right to pre-empt under English law is, I believe, embodied in the provisions of this Bill for the first time, and only with the object of affording the landlord the means of protecting himself against persons who might purchase occupancy-rights with the intention of injuring him.

The landlord will be put to as great inconvenience by a hostile purchaser in the one case as he will be in the other; the same with a farm destroyed. It will be as useless to him in the one case as it will be in the other.

The effect of these provisions, coupled with Chapter VIII, will be ruinous to the landlord.

Every time a landlord elects to exercise his right to pre-empt, a title to hold at fixed rates will be set up

Every time a raiyat transfers his holding as a holding at fixed rates, or a transferee anticipating pre-emption takes measures to evade the law, even though the landlord does not wish to pre-empt, he will be compelled to contest the transfer, for fear his not contesting it at once may be taken as an admission of the transferee's right to hold at fixed rates in perpetuity.

Had the Committee seen its way to accepting my amendments and confined the operation of this chapter to holdings under mukarrarí pattá or raiyats whose rights had been declared by a decree of Court, although the landlords' rights would not have been restored to them in their entirety, the mischievous effects of encouraging persons to

attempt to evade the law by setting up the presumption would have been avoided.

2. *Chapter V.—Restrictions on sub-letting.*

In respect to the right mode of treating the subject of sub-letting, I am at variance, nearly on all points, with the majority of the Committee.

I do not think there is any necessity to place restrictions on sub-letting with the sole object of discouraging it.

I believe the conversion of the occupancy-raiyat who sub-lets into a tenure-holder will be detrimental to the best interests of the landlords.

I believe it necessary to bring the system under some control, partly with a view to protect the occupancy-raiyat, but mainly with a view to protect the poorest class of cultivators, the raiyat's raiyats.

The power to sub-let is a necessity to the raiyat, possibly of even greater importance to him than the power to transfer.

It enables the occupancy-raiyat to tide over his temporary embarrassments.

It enables the labouring classes, who might not otherwise succeed in securing land to assist in the support of their families, to acquire it.

It is legal, and the practice has hitherto been under no sort of restriction, and under no sort of restrictions will it ever be abandoned.

As long as there exists a class of people craving for the possession of land and poorer than the people in possession, or a class who can put the land to more profitable use than the persons who at present hold it, or as long as the line which divides an usufructuary mortgage from a sub-lease remains undefined, sub-letting will be practised.

The sub-lessees should be protected, and while there is yet time the system should be brought under some sort of control.

The matter may soon force itself on the attention of the Government in such a way as to make the shirking of the question an impossibility.

3. *Chapter V.—On enhancement.*

Under the provisions of the draft Bill submitted to the Select Committee for report, the landlord might enter into an amicable arrangement with his tenant to receive an enhanced rent up to six annas in the rupee on former rates, provided the enhanced rent did not exceed one-fifth the value of the gross produce of the land in staple crops.

He might enhance under suit, on the grounds that the rate paid for the land was below the prevailing rate in the neighbourhood, on the ground that the productive powers of the land had increased otherwise than through the agency of the tenant, and also on account of a permanent rise in prices, provided the enhanced rents did not exceed one-fifth the value of the produce in staple crops, and provided it should in no instance exceed double the previous rent.

Both in the instance of voluntary enhancement and enhancement under suit, the enhanced rent was to hold good for a term of ten years. Under the Bill as revised by the Select Committee, enhancement under contract is in no instance to exceed four annas in the rupee.

Below two annas or up to two annas it shall hold good for seven years, above two annas for fifteen years.

Judicial enhancement by reason of the holding being held at a rate below the rate prevailing in the neighbourhood may be made up to fifty per cent. increase on the former rate, and on account of a permanent increase in prices up to twenty-five per cent.

In any case decided on its merits, whether enhanced or not, the rate shall hold good for fifteen years.

The one-fifth limit has been abandoned in both instances.

Legal enhancement has, I admit, been made very much easier than it is under the present law; but I humbly submit that the omission of a limit which was admitted on all hands to be unascertainable is not sufficient reason for placing the restrictions on enhancement that the majority of the Committee have thought it necessary to place upon it, either in the way of reducing the limit or increasing the term.

It is to be presumed that tenants with fixity of tenure secured to them will only agree to an enhanced rent out of Court, when they know that the landlord by going to Court might get a very much higher rate decreed.

I do not approve of the policy which drives both landlords and tenants to appeal to a Court of law in matters which they can decide very much better for themselves.

In the matter of voluntary enhancement, it was only necessary to declare that enhancement under contract should be under registered agreement, and that the tenant in agreeing to it acted as a free agent.

If it was necessary to put a limit to the amount, the term should have been left to contract.

The fifteen-year limit being adopted in both instances, the landlord will exact the last farthing of what is due to him: we permit no compromise.

It is but fair to the Committee to say that I was alone in the desire to see the arbitrary limit on enhancement on account of the holding being held at a rate below the rent prevailing in the neighbourhood omitted; but I still think it would have been better to have left the matter to the discretion of the Courts.

The Courts have been given the power to make the enhancement gradual over a period of five years. They should be unfettered on both points.

4. *Chapter VIII.—On the right of an occupancy-raiyat to hold at fixed rates.*

Section 64 (1), Ditto (2), Ditto (3). The first allows a raiyat whose rents have not been changed from the time of the Permanent Settlement to hold his land at that rent in perpetuity.

The second allows it to be presumed, until the contrary is proved, that a raiyat who has held his land at one rent for 20 years previous to the introduction of the suit has held it at that rent from the time of the Permanent Settlement.

The third makes the above rule applicable to commuted rents also.

In my notes filed with the rest of the papers on the Bill, I recorded my dissent with the provisions of these sections as they then stood in the Bill; the alterations now made are alterations in form, not in substance.

During our discussions in Committee no arguments were submitted, no attempt was made to justify their being originally embodied in Act X of 1859, none in reply to the assertion that they were an infringement on the terms of the Permanent Settlement, none to induce me to alter the opinion expressed by me in my notes.

The pleas urged for their retention in the present Bill were, that they represented the present law, that no case had been made out to induce the Committee to alter the present law, and that it is more difficult for the raiyat to prove his right to hold at fixed rates, than it is for the landlord to prove how, when and on what terms the raiyat was let into possession of the land.

We urged that the Permanent Settlement and its concomitant Regulations never intended that any class of raiyats other than mukarraridárs and

istimrárdárs should hold their lands at one fixed, unalterable rate in perpetuity.

That it never contemplated the creation of any "privileged" class among occupancy-raiyats.

That Act X of 1859, in creating a privileged class among occupancy-raiyats, trenched upon the proprietary rights of the landlords, and, in securing to the raiyats a right to hold their lands at a fixed rent in perpetuity, it reduced the proprietors to the position of annuitants on their own estates.

In declaring that the presumption shall run from twenty years previous to the introduction of the suit instead of from a fixed date it became a constantly accruing title.

That the privilege being a valuable one, one that it is to the interest of the raiyat to acquire in the future and to the interest of the landlord to prevent his acquiring, it was detrimental to the best interests of both to retain it in the Bill in its present form: it caused constant friction.

At the same time as I denied the justice of its enactments in Act X of 1859, I admitted that it would be harsh and unjust to cancel rights that had grown up under the operation of the present law.

To obviate all appearance of acting unjustly to raiyats who had secured such rights I proposed that the presumption should run from 20 years previous to the introduction of the Act, instead of, as it now does, 20 years previous to the bringing of the suit. I humbly submit that, had the Committee adopted this suggestion, raiyats who have secured to themselves the right to hold at fixed rates would have been secured in their titles, and the first instalment of justice would have been meted out to the zamíndárs. In a Bill which is admittedly being enacted to define the rights of landlord and tenant in the future, which is being passed to restore to the raiyat rights he is supposed to have been deprived of by the legislation of the past or that he has forfeited by his own carelessness or by his own acts, it is but fair to the landlord to restore to him anything that the loose legislation of the past may have deprived him of.

If it is found impossible to return to him what he has been deprived of in the past, he should at least be protected in the future.

Under the terms of the Permanent Settlement, only mukarrarídárs and istimrárdárs were allowed to hold at fixed rates; not so occupancy-raiyats.

Previous to Act X of 1859 any person claiming a right to hold at fixed rates or rents was obliged to prove his title to do so from a date 12 years antecedent to the decennial settlement, his title was otherwise not complete; that is to say, his title was not dependent on anything contained in the Permanent Settlement, but on the acts of the zamíndárs themselves previous to the settlement.

At the time of the Permanent Settlement the cultivators of the soil were divided into three classes—mukarrarídárs or tenure-holders, resident-raiyats with prescriptive rights of occupancy and non-resident-raiyats or tenants-at-will. Act X of 1859 was the first attempt made during 66 years to give non-resident-raiyats rights of occupancy in the soil; in their case, at any rate, the right to hold at fixed rates cannot be founded on anything contained in the terms of the Permanent Settlement, and the landlord should not be called upon to rebut the presumption: the onus of proving the right should be cast on the raiyat.

At the time of the Permanent Settlement, and previous to Act X of 1859, all raiyats with rights of occupancy were treated alike in the matter of rents—"all" were expected to pay the prevailing rate.

It is difficult to find out from a reference to the published papers relating to the passing of Act X of 1859 what led up to the embodiment of these provisions in that Act.

In the draft Bill published in 1857, it only says "hereditary raiyats holding at fixed rates of rent are entitled to receive pattás at those rates", but no mention is made of the 20 years presumption afterwards embodied in the Act of 1859.

Had the Bill of 1857 not been amended, the onus of proving his right to hold at fixed rates would still have been cast on the raiyat claiming it.

In all the published criticisms on this draft Act, Mr. Sconce alone fully discusses the raiyat's right to hold at fixed rates, but he founds the right upon the higher and more intelligible ground that "the Permanent Settlement was not one-sided—permanent for the landlord and not permanent for the tenant"; but he errs in drawing this inference mainly from the provisions of sections 51 and 60 of Regulation VIII of 1793. On a reference to these sections it will be found that the former refers to taluqs, and from the operation of the latter the Province of Bihár was exempted.

I would submit that, if we are to maintain the present law as against the landlord, simply because it is the present law, we are not justified in going beyond the present law in favour of the raiyat, as we have done in many instances.

In reference to the declaration often made that it is easier for the landlord to rebut the presumption than for the raiyat to prove his right, I would only repeat that the persons who make this assertion have no conception of the difficulties in the way of the landlord; that it is easier for any given number of tenants to prove their landlord's handwriting than for the landlord to prove the execution of documents executed by men who could not write; and that all the old Regulations made it compulsory on the landlord to execute a document in favour of the raiyat. None made it compulsory on the raiyat to execute one in favour of the landlord.

The present law provides for cases in which the rent has always been paid in cash; under the present Bill, it is intended to go a step further and apply the rule to commuted rents.

Although I was in the unenviable position of sole dissentient on this point in Committee, I must still beg to be allowed to protest against this clause being made law.

It goes far beyond anything we are justified in enacting; it is equal to allowing every raiyat who formerly held at a grain-rent, and now holds at a cash-rent, to hold at one fixed, unalterable rent in the future.

Severely as these provisions bear on the landlords under the present law, they will bear ten times more severely on them in the future.

With the interchange of pattás and kabúliyats made no longer necessary, the future is in the hands of the raiyat.

Useful as the powers to be given to the Local Governments under the Record-of-rights and Settlement of Rates Chapters may be made in the future, with these provisions unaltered our Courts will be deluged with litigation and the zamíndárs ruined.

Their effect can only be minimized by confining their provisions to rents to be commuted in the future and fixing a date from which the presumption is to count.

Their effect on the transfer and pre-emption clauses I have already noted.

5. *Chapter IX.—Sub-division of holding.*

The Bill declares an occupancy-holding shall in the future be transferable, and rightly declares it shall only be transferable as a whole.

A transfer of a portion of a holding is declared void as against the landlord.

The right to transfer has not hitherto been among the legal incidents of an occupancy-holding: the Courts have times out of number declined to give a transferee a right to hold the land when purchased as against the will of the landlord. In spite of the uncertain tenure of the transferee we see rights of occupancy being sold under voluntary sales and sold under decrees of Court in every district in the province.

In some districts it has become so fixed, it has become so common in spite of its illegality, that the custom now overrides the law.

The prevalence of the custom in spite of its illegality is now forcing the Government to declare it valid.

It is now proposed to legalize the transfer of an entire holding, but to declare it illegal as against a landlord to transfer a portion of a holding.

To legalize the transfer of a portion of a holding would be bad policy—bad for the landlord, worse for the raiyat; but to declare the act of a raiyat void as against the landlord and legal as against himself is to permit a state of things to grow up gradually which will eventually force the Government to interfere and legalize proceedings which they now deprecate.

To allow it to be illegal as against the landlord and legal as against the raiyat will not prevent the raiyat transferring it—it will only depreciate the market-value of the holding.

As the raiyat's necessities arise, he will dispose of his holding piecemeal from the fact of its being invalid against his landlord possibly at one-half of its value.

There are three ways of preventing the raiyat disposing of his holding piecemeal, namely:—

to declare a transfer of a portion of a holding illegal as against both landlord and raiyat;

to allow the landlord to treat the transfer as an abandonment of that portion;

to deem the raiyat to have broken a condition on breach of which he is, under the terms of an agreement between him and his landlord, liable to be ejected.

The last is the most drastic, and the one I advocated.

6. *Chapter X.*

Under this chapter the Local Government may, at the request of a landlord, at the request of a large number of raiyats or to avert a dispute, order a settlement to be made of the rents of the whole estate.

Under this chapter as it stands the rent-roll settled or ascertained of the estate must hold good for a period of 15 years after a settlement is made, provided nothing debarred the landlord applying for an enhancement.

(1) It would hold good in cases where the landlord applied for an enhancement, and the enhancement was allowed.

(2) It would apply in cases where his application was disallowed.

(3) It would apply where the landlord had a right to apply and did not.

(4) It would hold good in all cases where the settlement was made at the request of a number of raiyats.

(5) It would either compel the landlord to attempt to enhance the rents of all raiyats who were not parties to the application or to be debarred enhancing for 15 years.

(6) It applies to occupancy and non-occupancy-raiyats equally; it would therefore have this result, that it would at once give every non-occupancy-raiyat occupancy-rights.

(7) It will induce raiyats to demand a settlement in order to acquire rights they are not entitled to. It permits of no compromise.

The period should stand as it stood in the Bill, namely, 10 years.

It should only apply to cases in which the landlord applied for an enhancement or occupancy-raiyats had any dispute in reference to their rent.

A non-occupancy-raiyat should not be afforded the means of acquiring occupancy-rights under its shadow, or a most useful chapter will be turned into an instrument of oppression.

7. *Chapter XV.—Incumbrances.*

The last point on which I would wish to be allowed to record my dissent from the finding of the Committee is one of the utmost importance to the trader and also to the raiyat.

The Bill declares that a tenure, when sold under a decree of Court for arrears of rents, shall first be sold subject to registered incumbrances, but allows an occupancy-holding to be sold free from incumbrances.

The Bill certainly allows a person claiming to hold a lien on an occupancy-holding to protect his interests by paying up the arrears due and thereby to acquire a first mortgage; but this is not sufficient protection.

I do not agree with the Committee in thinking any distinction should be made between tenure-holders and occupancy-holdings.

Raiyats holding at fixed rates being subject to the same provisions as tenure-holders, will encourage litigation.

An attempt will be made to set aside the sales of occupancy-holdings by setting up the presumption to hold at fixed rates after sale.

Whether it will be the duty of the Court, the decree-holder, the debtor or the purchaser to enquire whether it is an ordinary occupancy-holding or an occupancy-holding at fixed rents that is brought to sale, or who will be responsible for any loss, should any occur, is not clear.

It was necessary to declare that the incumbrance to be protected was binding on the whole of the holding, not only on a portion of it, but nothing more.

In not affording the occupancy-raiyat this protection we injure his credit and force him to pay heavy interest where he might borrow on easier terms.

T. M. GIBBON.

Memorandum of dissent from the finding of the majority of the Select Committee on certain provisions of the proposed Tenancy Bill.

WHILE I concur generally with the majority of the Select Committee in accepting the provisions of the Bill as now revised, I think it right to add that in some particulars the interests of the tenants do not appear to me to be sufficiently protected. The Bill greatly facilitates the enhancement of rents, especially by the substitution of the simple ground of a rise in prices for the old rule which required proof of an increase in the value of the produce. While this great advantage has been given to the landlords, the check provided by section 75 (*d*)* of the original Bill has been taken away, the plea that the rate of rent paid by a raiyat is below the prevailing rate has been retained as a ground of enhancement, and the Bill provides no limitation whatever of the rent which a landlord may demand when a tenant (other than a settled raiyat) is first admitted to the occupation of land. Even in the case of a settled raiyat, the landlord may demand an increase of twenty-five per cent. on the rent previously paid. These sections put into the hands of landlords a powerful engine for enhancing rents up to the maximum amount which a tenant will agree to pay rather than give up the land. For, as agricultural holdings must, from time to time, fall into the hands of the landlords, and as the landlords are left free to let these out at almost any rental they may think fit to demand, it is evident that the prevailing rate will steadily increase, and that this rate will regulate the rents not only of tenants newly admitted to occupation, but of the general body of the tenantry. For this reason, the retention of the prevailing rate as a ground of enhancement appears to me to be fraught with serious danger, and I should be glad to see it eliminated from the Bill.

Similarly, I am of opinion that section 53 of the revised Bill does not sufficiently guard the interests of the tenant in cases in which the landlord applies for a commutation of produce-rents. The section ought to provide, first, that the money-rent shall not in any case exceed the rental at which the holding is entered in the landlord's road-cess returns: and, secondly, that if the commutation is based on the average value of the rent received by the landlord during the preceding ten years, a substantial deduction shall be made from such value in consideration of the whole risk of cultivation being taken by the raiyat. Provision was made for such a deduction in the draft Bill of the Rent Commission, and in the Bill submitted by the Government of Bengal.

The wording of section 96 of the Bill, relating to abandonment, seems to me likely to open the door to serious abuses. When a raiyat has been deprived of his holding under the plea of his having abandoned it, it is of very little use to authorize him to institute a suit for the recovery of possession. If this section is necessary at all, its operation should be confined to holdings in the possession of non-occupancy-raiyats. There is not the smallest reason for extending it to occupancy-holdings, as, in these cases, the landlord's rent is completely secured by his power of bringing the holding to sale for arrears.

H. J. REYNOLDS.

The 17th March, 1884.

* This clause declared that "the enhanced rent shall not in any case exceed one-fifth of the estimated average value of the gross produce of the land in staple crops, calculated at the price at which raiyats sell at harvest-time".

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 12, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 14th March, 1884:—

WE, the undersigned Members of the Select Committee to which the Bengal Tenancy Bill was referred, have considered the Bill and the papers noted in the schedule hereto annexed, and have the honour to submit this preliminary Report.

2. We have recast the Bill, and have embodied in the revised Bill such alterations as commended themselves to the majority of us, but there are various points on which we consider that further information is requisite, and we recommend that the Bill as altered by us should be republished for further criticism, in the interval that will elapse before we resume our labours in November.

3. The present Report being only a preliminary one, several members of the Committee wish it to be recorded that they postpone the expression of their opinions on particular points until the final Report is submitted to the Council. It must also be understood that generally in referring to the decisions of the Committee we state the views of the majority.

CHAPTER II.

CLASSES OF TENANTS.

4. This chapter has been introduced for the purpose of describing the different classes of tenants with which the Bill deals. It will be seen from it that raiyats at fixed rates are now treated as a distinct class instead of being, as in the original Bill, a sub-class of tenure-holders. It will further be observed that the term "non-occupancy-raiyats" has been substituted for "ordinary raiyats," which latter term has been justly objected to as a misnomer Lastly, it will be seen that tenants of homestead or Bastu land, which is not part of an occupancy-holding, have no place in the revised Bill. It may be that on further consideration it will be found desirable to introduce into the Bill some provisions relating to tenants of this class, but at present we have not before us the information requisite for dealing with the questions involved. It is clear that, owing to the various conditions which attach to the holdings of such tenants in different parts of the country, Chapter VII of the original Bill would, if it were to be retained, need amendment in certain particulars. But we are unable to formulate this amendment, pending the receipt of further information, which we hope will be supplied by the Local Government.

5. In the section which relates to the distinction between tenure-holders and raiyats, we have endeavoured to describe, rather than to define, each class. Whilst recognising the expediency of laying down rules for the guidance of Courts in dealing with cases which lie near the border-line between the two classes, we retain the opinion that any attempt to frame a rigid definition of either class would tend to create, rather than to remove, difficulties.

CHAPTER III.

TENURE-HOLDERS.

6. The sections (14-17) of the original Bill relating to the right to hold at fixed rates have been removed to Chapter VIII of the revised Bill, and will be more particularly referred to when we come to speak of that chapter. Section 20 of the original Bill, which contained a special provision relating to lands in temporarily-settled districts, has been transferred to the supplemental chapter.

7. We have made a considerable alteration in section 7, sub-section (3), which lays down the rules to be followed by the Court in enhancing the rent of a tenure in cases where the matter is not provided for by contract or custom. It is now simply enacted that the Court shall not leave the tenure-holder less than 10 per cent. of the profits, and in fixing the rent shall have regard to the circumstances under which the tenure was created, to the improvements made by the holder of it, and to the cost and risks of collection. We have left untouched the provisions that the enhanced rent should not be more than double the previous rent and that it should hold good for 10 years.

8. The special provisions of the original Bill relating to patní tenures, with the exception of the definition section (36), which has been transferred to the preliminary chapter, and the section (42) regarding summary sale, which has been placed in the chapter relating to that subject, have been included in this chapter.

9. Of the alterations we have made in the sub-division of this chapter relating to registration of transfers and successions, the following only seem to call for notice, namely:—

(1) the addition to sub-section (1) of section 15 of a proviso allowing a landlord to refuse to register a transfer of a tenure if any rent is in arrear;

(2) the abolition of the additional fee imposed by section 27 (2), clause (b), of the original Bill as a penalty for delay in applying for registration, and the insertion of a clause fixing the fee at Rs. 2 where no rent is payable by the tenure-holder [section 15 (2)];

(3) the addition to section 18 of a sub-section providing that a person becoming entitled to a tenure by transfer or succession shall not be entitled to recover rent by suit, distraint or other proceeding until the transfer or succession has been registered or a notice of it has been served on the landlord; and

(4) the amendment of the section (now section 21) relating to the granting of copies of entries in the register, so that the fee for every copy granted shall be such amount, not less than one anna or more than one rupee, as the Local Government may fix.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

10. In the matters of transfer and succession we have assimilated the conditions of the settled-raiyat holding at fixed rates to those of tenure-holders. It was suggested that this class of raiyats should be sub-divided into (a) those holding under a registered lease or judicially declared title, and (b) those holding at fixed rates under the statutory presumption, the former being assimilated to tenure-holders and the latter to raiyats with a right of occupancy; but the majority of us were unable to accept this proposal.

CHAPTER V.

OCCUPANCY-RAIYATS.

11. The main lines of this chapter, so far as regards the acquisition of the status of a raiyat and the right of occupancy, remain unchanged, and we have only to mention such alterations in the details as appear to us to call for notice.

Our attention has been drawn to the inconvenience which may arise in certain exceptionally large estates, such as those of the Maháráját of Burdwan and others, from the status of settled-raiyat holding good over the whole estate. We desire to learn if the Government of Bengal consider that in these exceptional estates any known fiscal or administrative area can be advantageously substituted for the area of an estate.

12. Another matter connected with the definition of "estate" for the special objects of this chapter, to which we desire to draw attention, is the provision in section 27 (b) to the effect that where a partition has taken place "since the first day of January, 1853" the parent estate shall, notwithstanding the partition, be regarded as a single estate. The date mentioned was chosen because it was understood that it might reasonably be expected that from about that time complete records of partitions would be forthcoming; but the particular point of time to which we should go back is of course open to further consideration, and accordingly we have directed that the words fixing it shall be shown in italics.

13. We have, at the instance of the Government of Bengal, inserted in section 26 (definition of settled-raiyat) a sub-section (2) providing that when it is proved or admitted that a person holds land as a raiyat, it shall be, as between him and his landlord, presumed for the purpose of the section, until the contrary is shown, that he has for twelve years held the land or some part of it as a raiyat. Such a presumption appears to us to be warranted by the existing state of things in the Lower Provinces, and, while it tends to simplify litigation, it is one which the landlord ought to have no difficulty in rebutting in any case in which it does not hold good.

14. We have [section 26 (6)] retained in substance the provision of the original Bill under which a person does not lose his status as a settled-raiyat merely by the accident of his being out of possession of a holding in the village or estate for any time not exceeding one year, but have added to it a clause [sub-section (7)] to the effect that if he recovers possession of any land under section 96 (as to which see *infra* paragraph 66) he shall be deemed to have continued to be a settled-raiyat notwithstanding his having been out of possession for more than a year.

15. The chapter relating to merger having been omitted from the Bill for reasons to be explained further on, we have thought it desirable, in order to prevent any misapprehension, to insert in this chapter a section (28), providing that, if the landlord of a raiyat having a right of occupancy acquires the interest of the raiyat by purchase or otherwise, the occupancy-right shall cease to exist, but that nothing in this provision shall prejudicially affect the rights of any third person.

16. We have omitted section 48 of the original Bill, which provided for the acquisition of the occupancy-right by grant, and have substituted for section 49 of that Bill relating to the acquisition of the occupancy-right in lands of the classes comprised under the term khámár as there defined, a section (30) simply providing that nothing in the chapter shall confer a right of occupancy in lands of those classes where such lands are held under a lease for a term of years or under a lease from year to year.

17. We have, in affirming that the raiyat may use the land in any manner that does not render it unfit for the purposes of the tenancy, added [section 31, clause (a)] that he shall not cut down trees thereon in contravention of any local custom.

18. In the division which relates to the landlord's right of pre-emption, and which is now headed "restrictions on transfer", we have [in section 32 (4)] provided that the landlord, if he elects to purchase, must tender the price within one month from the date on which it is agreed on or fixed, and we have also inserted words to allow the raiyat, if his landlord claims to purchase, the option of keeping the land.

19. We have further inserted in the same section a sub-section (5) providing that if the raiyat attempts to sell in contravention of the provisions of the section the sale shall be void as against his landlord.

20. We have omitted section 55 of the original Bill, which gave the landlord a right of pre-emption when the occupancy-right is bequeathed.

21. As regards gifts of the occupancy-right, we believe that the great majority of such gifts would be either of the nature of bequests or of merely fictitious transactions covering sales. It is only in the case of gifts of this latter class that the landlord seems to us to stand in need of any protection, and we think that sufficient protection will be afforded him by requiring that a gift must be made by a registered instrument, and that a copy of the instrument shall be forthwith served on the landlord so as to give him an opportunity of questioning the transaction if he sees any ground for believing that it is not *bonâ fide*. We have, however, exempted from this requirement gifts by Muhammadans to persons within the prohibited degrees, as such gifts are usually substitutes for testamentary dispositions (section 35).

22. Lastly, we have added a section (36) restricting the right of pre-emption to proprietors and permanent tenure-holders and other tenure-holders authorized by them to exercise it, as it seems to us that the exercise of such a right by a temporary tenure-holder, otherwise than with the permission of a superior landlord having a permanent interest in the land, would give rise to difficulties and complications which it is desirable to avoid.

23. Great objection has been taken to section 56 of the original Bill, which provided that when a landlord acquires the occupancy-right, any raiyat afterwards taking the land shall have an occupancy-right in it: this section we have omitted.

24. We have also omitted section 57, which conferred the status of a settled-raiyat on every person inheriting an occupancy-right in land. The object of this latter section seems to us to be sufficiently secured by section 26, (4).

25. The next division of this chapter, headed "restrictions on sub-letting", is new. It is based on certain proposals put forward by the Government of Bengal, and having for their objects to discourage the purchase of the occupancy-right by non-agricultural speculators and to protect the sub-lessee of a raiyat. This latter object, we may observe, could be only in part carried out by the provisions inserted here. Further provisions for securing it will be found in Chapter VII, relating to under-raiyats, of which we shall presently have to speak.

26. The main enactments in this sub-division of the chapter are—

1st.—That if the portion of his holding sub-let by an occupancy-raiyat exceeds half the holding, he shall, on being registered in a public register as a tenure-holder under an Act, which the Local Government propose to introduce into the Bengal Council for this purpose, be deemed to have become a tenure-holder, the result of which will be that his sub-lessees will become raiyats, with an actual or potential right of occupancy (section 37).

2nd.—That if a raiyat sub-lets his holding or any part of it the sub-lease shall not be valid for a period exceeding seven years (section 38).

These enactments are qualified by certain provisions, the most important of which are—

1st.—That they shall not apply to the case of a raiyat who is compelled to sub-let by being disabled from cultivation by age, sex, disease, accident or temporary absence from home in certain cases, and

2nd.—That when a raiyat is converted into a tenure-holder, as above-mentioned, his rent shall be liable to enhancement on the same terms and subject to the same

conditions as if he were an occupancy-raiyat, and thus the position of his landlord will in this respect remain unaffected.

27. These provisions gave rise to considerable difference of opinion, and we are not insensible of the inconvenience arising from allowing a change to be created in the legal relations of a raiyat, both towards his landlord on the one hand and towards his own sub-tenants on the other, as the result of his own acts; a change, moreover, which must be determined by an arbitrary line difficult to ascertain, and complicated by the numerous exceptions which the circumstances of the cultivators obviously demand. There seemed, however, to the majority of us to be no better way of placing restrictions on sub-letting (a practice which it is admittedly impossible to prohibit) than by rendering the sub-letting raiyat liable to the summary sale for arrears, which is to be made applicable to tenures, and at the same time enabling his sub-tenants to acquire rights of occupancy. These provisions illustrate the extreme difficulty of placing any substantial check on the practice of sub-letting, when it has once grown up. It will be observed that the converted tenure-holder, while liable to enhancement as an occupancy-raiyat, is in all other respects treated as a tenure-holder, and acquires with the liability to summary sale other incidents of tenure-holders, such as exemption from the pre-emption clauses, but that none of these provisions will come into operation until such time as he is registered. It was felt that to throw on the Courts the duty of ascertaining in a simple rent suit all the complicated conditions, which are connoted by his conversion, would be intolerable, and that the difficulty could only be met by the Local Government ascertaining and registering them. This it has undertaken to do.

28. The alterations which we have made in the provisions relating to the enhancement of the rent of occupancy-raiyats are considerable, both as regards form and substance.

We have removed the provisions relating to enhancement by means of a table of rates to a separate chapter following that relating to the record-of-rights and settlement of rents, and deal here only with enhancement in the ordinary way by contract or by a suit in Court.

29. As the Bill now stands amended the rent of an occupancy-raiyat cannot be enhanced by contract unless the contract is registered, and the following rules will apply to every such contract (section 41):—

(1).—The rent must not be enhanced so as to exceed by more than four annas in the rupee (25 per cent.) the rent previously payable by the raiyat.

(2).—The contract must fix the rent for a term of at least seven years.

(3).—If the enhanced rent exceeds by more than two annas in the rupee (12½ per cent.) the previous rent, the contract must fix the rent for a term of at least fifteen years.

(4).—The registering officer must, before registering a contract under this section, ascertain that the contract is in accordance with the provisions of the Act, and that the raiyat entering into it acts as a free agent. It will be observed that under the revised section the registering officer, instead of being required to approve a contract and to satisfy himself that it is fair and equitable, is now merely required to satisfy himself that it is in accordance with the provisions of the Act.

30. Further, it is provided (section 42) that where land, which has been previously held by a tenant at a money-rent, is let to a settled-raiyat of the village or estate in which it is situate, that raiyat shall not be bound to pay for it any rent higher than that which was paid for it by the previous tenant, except in pursuance of a registered contract, and that the rules just referred to shall apply to every such contract.

31. As regards enhancement by suit our object has been, while laying down rules which will be substantially just to both landlords and tenants, to devise a system which would avoid those elaborate and difficult inquiries, the necessity for which has made the present enhancement law an almost useless instrument in the hands of the landlords.

With this view we have specified the grounds on which an enhancement suit can be instituted, as follows (section 43):—

(*a*).—That the rate of rent paid by the raiyat is below the prevailing rate payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity.

(*b*).—That there has been a rise in the average prices of staple food crops in the locality or at the usual markets.

(*c*).—That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(*d*).—That the productive powers of the land held by the raiyat have been increased by fluvial action.

32. An enquiry had shown that an authoritative Table of Rates could be prepared by the Government of Bengal only for exceptional tracts, and no other general method has been submitted to us for placing before the Courts the information with respect to productive powers of the land which would enable them to apply the rules for enhancement on the ground of increase in those powers. But the zamíndárs objected to the total elimination of this as a legal ground of enhancement, and, as it was part of the old law, it has been retained. Enhancements on this ground when the increase is caused by the landlord's improvement will be facilitated by the system of enquiry and registration provided for hereafter; but enhancements on the ground of increase of productive powers caused by fluvial action will still, we fear, be liable to the same difficulty, caused by the absence of any proof of the former productive powers of the soil, as has rendered this ground of enhancement futile in past years.

33. On the other hand enhancement on the ground of prices would be greatly facilitated by the preparation of authoritative price-lists by the Local Government. It should be explained that the price-lists of staple food crops are to be taken simply as indicating a general rise or fall in prices, and without any reference to the particular crop grown on the land, the rent of which is in dispute; and our intention is that the price-lists should be worked out very much on the principle on which the commutation of tithes according to average prices is worked out in England as explained at pages 250 *et seq* of Mr. Justice Field's Digest.

34. It has been urged that, in applying the proportion rule in the case of prices, some deduction should be made to cover the effect of these increased prices on the cost of cultivation. We are however content for the present to leave the protection of the raiyat in this respect to the other restrictions on enhancements, especially to section 48, which provides that the Court shall not in any case decree an enhancement, which appears under the circumstances of the case to be unfair or inequitable. But the point will receive further consideration when the alterations made in this chapter have been subjected to public criticism.

35. The difficulty which, as we have explained, stands in the way of enhancement on the ground of an increase in the productive powers of the land, applies with no less force to the proposal to limit the maximum enhanced rent to one-fifth of the average annual gross produce. The majority of the Committee were of opinion that it would be almost impossible to ascertain in each instance the average annual gross produce expressed in staple crops, and weighty objections have also been taken to the principle underlying that proposal. We have accordingly struck out the provision to the above effect contained in section 75 (*d*) of the original Bill. As a set-off against this we have increased the stringency of another limitation contained in the original Bill by providing that, when rent is enhanced on the first ground mentioned above, the enhancement shall not amount to more than 8 annas in the rupee (50 per cent.), and that, when it is enhanced on the second or fourth of those grounds, the enhancement shall not amount to more than 4 annas in the rupee (25 per cent.), and by providing, as above stated, that the Court shall not in any case decree an enhancement which appears under the circumstances of the case to be unfair or inequitable (section 48).

36. In connection with enhancement up to the prevailing rate payable by occupancy-raiyats of the same class, we have in section 44 introduced a clause [(*c*)], based on section 20 of the North-Western Provinces Tenancy Act, providing for cases in which local custom may make it necessary to take into consideration the caste of a raiyat.

37. As regards enhancement on the ground of an improvement made by the landlord, we have laid down no hard-and-fast rule, but have merely provided [section 46 (*b*)] that in determining the enhancement to be allowed the Court shall have regard to—

(i) the increase in the value of the produce caused by the improvement,
(ii) the cost of the improvement;
(iii) the cost of the cultivation required for utilizing the improvement, and
(iv) the existing rent and the ability of the land to bear a higher rent.

And, in order to avoid perplexing inquiries into matters long past, we have provided [section 46 (*a*)] that the Court shall not grant an enhancement unless the improvement has been registered, that is to say, registered in accordance with the rules which are laid down in Chapter IX, and which, as will be seen, are so framed as to secure that all requisite information will be duly placed on record.

38. The leading rule adopted by us for enhancement on the ground of increase of productive power arising from fluvial action is suggested by that proposed by the Rent Commission, and is to the effect that the landlord shall not have more than half the value of the net increase in the produce of the land [section 47 (*c*)].

39. Section 78 of the original Bill, which limited the right to bring successive enhancement suits, has now (section 50) been restricted to suits on the ground that the rent paid is below the prevailing rate, and suits on the ground of an increase of prices; but the restriction will now apply to cases in which a suit for enhancement has been dismissed on the merits as well as to cases in which enhancement has been decreed, and the period which must elapse between successive enhancements has been extended from ten to fifteen years.

40. The grounds on which a suit for reduction of rent may be brought are in the amended Bill (section 51) limited to the following:—

(*a*) that the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand or other like calamity, and
(*b*) that there has been a fall in the average prices of staple food crops in the locality.

In either case the Court is to direct such reduction of the rent as it thinks fair and equitable.

41. Section 52 of the amended Bill, which provides for the preparation of authoritative price-lists, differs from the corresponding section of the original Bill in certain particulars; but the only alteration which we need notice here is that the new section empowers the Local Government to direct price-lists to be prepared for past years as well as for current years. Materials for such price-lists exist in the statements of prices published regularly by the Bengal

Government during the past 12 years, and, if it be possible to correct these lists and render them a trustworthy record of local prices, the work of the Courts in enhancing rents on the ground of a rise in price will be greatly simplified.

42. Section 80 of the original Bill, which provided for the enhancement of the rent of pasture lands, has been omitted, as it is understood that the letting of land to individual tenants for grazing purposes is so very rare that no special rules are needed to regulate it.

43. Section 81 of the original Bill, which prescribed a limit to the amount of the rent payable in kind by an occupancy-tenant or varying with the crop, has likewise been omitted, because it was found that local usage on the point was exceedingly complicated, large deductions being usually made from the crop for various purposes before dividing it, and that to draw a hard-and-fast line would very probably mislead the Courts and have an injurious effect.

44. The section (53) providing for the commutation of rent payable in kind has been recast on the lines of section 16 of the Central Provinces Tenancy Act, 1883. As it now stands it admits of an application for commutation being made to certain officers, either by the landlord or the tenant, and empowers the officer to whom it is made to refuse it if it is opposed. Further, the new section allows a larger discretion than the original section in determining the amount of the money-rent to be paid. It merely provides that in making the determination the officer shall have regard to—

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

(*b*) the average value of the rent actually received by the landlord during the preceding ten years.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

45. Section 89 of the original Bill provided that the non-occupancy-raiyat, or, as he was termed in that Bill, the "ordinary raiyat", should pay such rent as might be from time to time agreed on between him and his landlord, but subject to the provisions of section 119, which made five-sixteenths of the average annual value of gross produce the maximum of the rent. We now propose to abandon this maximum for the reasons which led us to abandon the corresponding maximum in the case of the enhancement of an occupancy-raiyat's rent, and the question accordingly arises whether any other restriction should be placed on contracts fixing the rent of a non-occupancy tenant. The majority of us are opposed to any such restriction, and accordingly the amended Bill leaves the parties free except in so far as it provides (section 57) that the rent shall not be enhanced after the raiyat has been admitted into occupation of the land, except by registered agreement or in the manner allowed by certain sections of the chapter to be presently noticed.

46. In section 58, which states the grounds on which a non-occupancy-raiyat is liable to be ejected, we have introduced a clause permitting him to be ejected, when he has for the first time been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired; but we have provided in the following section (59) that a suit for ejectment on this ground shall not be instituted unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

47. We have also decided to strike out the clause giving the non-occupancy-raiyat compensation for disturbance, but have provided in lieu thereof (section 60) that when an ejectment suit is brought against a non-occupancy-raiyat on the ground of his refusal to pay an enhanced rent, the Court shall fix a fair and equitable rent, and the raiyat shall have the option of holding on at that rent for a term of five years, after which he will be liable to be ejected on the same conditions as after the expiry of an initial lease, provided rights of occupancy have not accrued to him in the meantime.

CHAPTER VII.

UNDER-RAIYATS.

48. We have already (*supra* paragraphs 26 and 27) referred to the new provision introduced into the Bill which, by converting an occupancy-raiyat who sub-lets half his land into a tenure-holder, confers upon his sub-lessees the status and advantages of raiyats. The chapter

now under consideration provides a certain amount of protection to under-raiyats who are not entitled to the benefit of that provision.

Section 62 provides that the landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, namely :—

(*a*) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and

(*b*) in any other case—twenty-five per cent.

And section 63 provides that an under-raiyat shall not be liable to be ejected by his landlord, except at the end of an agricultural year, and after a written notice to quit has been served on him in the prescribed manner not less than six months before the expiration of that year.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

49. This chapter opens with the provisions relating to the right of tenure-holders and raiyats to hold at a fixed rent, which have been transferred from the opening of the original chapter relating to tenure-holders. The only change made in these provisions which seems to call for notice here is the addition of a clause to sub-section (*2*) of section 64, providing that, if an enactment should hereafter be passed requiring the registration of permanent tenures or of tenancies at fixed rates, the well-known presumption from twenty years' holding shall cease to apply to any tenancies which are not registered within the time fixed. The Local Government, we understand, propose shortly to introduce into the Bengal Council a Bill establishing a registration system of the nature just referred to, and, if that Bill becomes law, it will, we believe, with the aid of this clause, afford, so far at least as those classes of tenancies are concerned, the best remedy for the hardship which the landlords complain of as caused to them by the retention on the Statute Book of the presumption in question. The above presumption will also cease to apply when a record-of-rights has been prepared (see *infra* para. 77)

50. In section 66, (*2*), we have omitted the hard-and-fast rule laid down in the corresponding section (96) of the original Bill, that in calculating the addition to be made to the rent of a tenure on account of an addition to the area comprised in it, 30 per cent. should be allowed for profits, risk and cost of collection; and have merely provided that the Court shall have regard to the profits to which the tenure-holder is entitled in respect of the rent of his tenure.

51. In the section (67) relating to instalments of rent we have omitted as unnecessary the somewhat complicated proviso appended to section 98 of the original Bill.

52. We have in section 68 inserted a clause empowering the Local Government to try the experiment of making rules authorizing a tenant to pay his rent by postal money-order—a mode of payment which we think may in some cases be found convenient.

53. In sections 70 and 71 we have, instead of stereotyping the contents of the receipts and accounts to be furnished to tenants, given forms of these documents (in a schedule), and empowered the Local Government to alter them as convenience may require.

54. We have in section 70, (*4*), relaxed the stringency of the corresponding provision [section 100 (*4*)] of the original Bill by providing that a receipt not containing substantially the required particulars shall merely be "presumed until the contrary is shown" (instead of "deemed") to be an acquittance in full of all demands up to date.

55. It has been suggested that we should provide for applications for the withdrawal of rent deposited being exempted from Court-fees. We think such an exemption desirable, but it is within the power of the executive authorities to arrange for its being made, and we prefer to leave the matter in their hands.

56. We have, in the section (78) providing for ejectment from a non-transferable holding for arrears of rent, added a sub-section empowering the Court for special reasons to extend the period allowed for the payment of the rent.

57. We have empowered the Collector to depute an officer to divide or appraise the produce of a bhaoli holding, not only on the application of one of the parties concerned, but also in any case in which, in the opinion of the Magistrate of the District or Sub-Division, such action would be likely to prevent a breach of the peace [section 81 (*2*)].

58. We have further empowered the Collector in all cases to pass such order as he thinks just on the report of the officer deputed, and have provided that his order shall be final and be enforceable as a decree, unless he thinks fit to refer any question in dispute between the parties for the decision of a Civil Court [section 82 (*4*) and (*5*)]. This seems to us a simpler and more convenient procedure than leaving the parties to seek redress in the Civil Court in the first instance, as under the original Bill.

59. For section 117 of the original Bill we have substituted a section (set out in the margin) dealing comprehensively with the rights and liabilities of the landlord and tenant as to possession of the crop in cases where rent is taken by appraisement or division of the produce.

Rights and liabilities as to possession of crop.

83. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to exclusive possession of the whole produce until it is divided.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord, but shall not be entitled to remove any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time.

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

The penal provision of section 117 of the original Bill has not been reproduced here, as the matter is sufficiently provided for in the more general penalty clause now inserted in Chapter XIX. (section 220).

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

60. We have introduced a new section (88) providing that when a raiyat holds at a fixed rent or fixed rate of rent his landlord shall not be entitled to prevent him from making an improvement.

61. We have in section 89 (3) empowered the Collector to decide finally any question between an occupancy-raiyat and his landlord—

(*a*) as to the right of the raiyat to make an improvement, and

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

62. We have, in order to facilitate the decision of disputes regarding improvements, introduced a section (92) based on section 80 of the Central Provinces Tenancy Act, 1883, providing that a landlord or tenant, desiring to have any evidence recorded regarding an improvement which has been made, may apply to a Revenue-officer to record it, and that the record so made shall be admissible in subsequent proceedings between the parties. We have also as intimated (*supra* para. 37) introduced a section (91) providing for the registration of improvements made by landlords.

63. Section 129 (4) of the Bill as introduced provided that improvements made by a raiyat before the commencement of the Act should be deemed to have been made in accordance with the Act unless it was shown that the landlord forbade the raiyat to make the improvement and was ready to make it himself. For this we have substituted a sub-section [section 93 (4)] providing that improvements made by a raiyat between the 2nd day of March, 1883 (the day on which the Bill was introduced) and the commencement of the Act, shall be deemed to have been made in accordance with the Act. This prevents the section from applying retrospectively to any improvements made before the introduction of the Bill.

64. We have in section 94 somewhat enlarged the list of matters to be taken into consideration by the Court in estimating the compensation to be allowed for an improvement, the most important additions being the condition of the improvement with reference to its duration, and that "in the case of a reclamation or of the conversion of unirrigated into irrigated land" the Court shall have regard "to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent".

65. We have re-drafted the section (95) relating to surrender by a tenant, on the lines of section 33 of the Central Provinces Tenancy Act, 1883, and, in order to remove a misapprehension which appears to exist in some quarters, have added a sub-section (5) expressly providing that when a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

66. The difficulties which arise in cases where a raiyat to all appearance abandons his holding, but the landlord cannot be sure whether he can safely assume the holding to have been abandoned and let it to another tenant, we have attempted to meet by the section set out in the margin.

Abandonment.

96. (1) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) When a landlord enters under this section he shall cause a notice in the prescribed form to be published in such manner as the Local Government, by rule, directs, stating that he has treated the holding as abandoned and has entered on it accordingly.

(3) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may order recovery of possession on such terms, if any, with respect to compensation to persons injured as to the Court may seem just.

67. We have in section 99, which prohibits a landlord from measuring land more than once in ten years without the consent of the tenant or the permission of the Collector, allowed exceptions in the following cases, namely:—

(*a*) Where the area of the holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area.

(*b*) Where the area under cultivation is liable to vary from year to year, and the rent payable depends on the area under cultivation.

(*c*) Where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

68. In section 101, relating to the standard of measurement, we have introduced a sub-section empowering the Local Government after local inquiry to make rules declaring for any local area the standard or standards of measurement in use, and have provided that every such declaration shall be presumed to be correct until the contrary is shown. This, we think, will render section 158 of the original Bill unnecessary, and we have accordingly omitted it. Other provisions connected with measurement will be found in the chapter (X) concerning the record-of-rights.

69. In the division of this chapter relating to the appointment of a manager to act on behalf of co-owners of an estate or tenure we have added a section (109) empowering the High Court to make rules defining the powers and duties of managers.

70. We have omitted the section relating to merger. It was in our opinion open to serious objection, not only from the particular point of view of the framers of the present Bill, inasmuch as it allowed of the occupancy-right being retained in the hands of a landlord, his tenants being thus reduced to the position of under-raiyats, but also from a more general point of view, inasmuch as it conferred on individuals a large and arbitrary power to introduce, without any sufficient reason, a serious complication into the law of property, and one moreover which would be likely to serve as a cloak for fraud.

The immediate requirements of this Bill are, we think, sufficiently met by the section (28) which we have introduced into the occupancy chapter, and to which we have already referred (*supra* para. 15); and for the rest we are of opinion, after giving our best consideration to the views of the Hon'ble Mr. Justice Field, that the general question of merger is somewhat outside the proper scope of the present enactment.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

71. We have found it convenient to embody in a single chapter the two chapters of the original Bill relating to the above subjects, and to start with the record-of-rights, which is the simpler of the two.

72. The difficulty from the absence of a record occasionally felt, especially by a person who purchases an estate or tenure at a compulsory sale by auction, will, we think, be met by the new section (112) which admits, subject to certain conditions, of a record-of-rights being framed by Revenue-officer on the application of a proprietor or tenure-holder.

73. As regards the procedure in framing a record-of-rights, it will be observed that an important change has been made. Under Chapter XII of the original Bill the procedure was to be summary in all cases, whether there was or was not a dispute as to the entry which ought to be made in the record, and the result in all cases alike would have been merely an entry in the record, which would be *primâ facie* presumed to be correct, but would be open to be impugned in a Civil Court. In the amended Bill, on the contrary, a fuller opportunity is allowed for raising objections by a preliminary publication of the record, and if any entry, which it is proposed to make or which has been made, is called in question, the Revenue-officer is to inquire into the dispute according to the regular procedure of a Civil Court, and his decision is to have the force of a decree and to be appealable first to a special judge appointed to hear such appeals, and then, subject to the usual limitations of second appeals, to the High Court. Thus, in any case in which there is a dispute regarding an entry in the record, the question will be placed on the footing of a *res judicata*. Where, up to the time allowed after the preliminary publication of the record for preferring objections, no objection is made, the entry will be marked as undisputed, and as proposed in the original Bill will simply be presumed to be correct until the contrary is proved. We think that, having regard to the large scale on which those operations will be conducted, and to the impossibility of being sure that any sort of publication would bring home to every individual concerned the precise nature of the entries being made regarding him, we could not venture to give an undisputed entry any authority higher than that just mentioned.

74. The operation termed a "settlement of rents" includes, in addition to the preparation of a record-of-rights, the settlement of all such rents of occupancy-tenants and tenure-holders

holding otherwise than at fixed rents, as either the landlord or the tenant may apply to have settled.

The questions whether a rent is open to settlement, and, if so, the amount at which it should be settled, are of a complex nature depending on two very different sets of considerations. They depend in the first place on issues, relating to such matters as the existence of the tenancy, the extent of the land, the status of the tenant, the conditions under which he holds, &c., and possibly involving points of law, which could not satisfactorily be decided without the security afforded by an ultimate appeal to the highest judicial authority. They depend in the second place on considerations of an economical nature, such as the state of prices prevailing at different periods, the effect of improvements, and so forth, which it is universally admitted cannot be adequately dealt with either in the first instance or on appeal except after local inquiry and by persons possessed of special technical knowledge. The problem before us has been how best to provide for the separation of these two elements, so that each may be dealt with, and finally dealt with, by those most competent to deal with it. The solution of this problem proposed in the original Bill will be seen on referring to section 160 of that Bill. The modification above described in the record-of-rights procedure, and especially the introduction of the special judge, who will doubtless always be an officer possessing a familiarity with the local agricultural system, in addition to judicial qualifications, has opened the way to what appears to us to be a more satisfactory solution. What we propose is that when a rent, which has been settled or which it is proposed to settle, is disputed, the dispute shall be dealt with by the Revenue-officer in the same way as a dispute regarding an entry in the record-of-rights, that an appeal on the whole question shall then lie to the special judge, and that his decision shall be final unless, in a second appeal in respect of one of the record-of-rights entries with reference to which the rent has been settled, the High Court alters the decision of the special judge. In this case the High Court may settle a new rent, but in so doing is to be guided by the other rents shown in the rent roll. In other words, there can be no second appeal to the High Court merely on the ground that the rent has been pitched too high or too low, but if a second appeal is preferred, as it may be, on the ground that the special judge, owing to some error on a point of law, has, for example, found the holding to comprise more land or less land than it actually does comprise, and the appellant succeeds, the High Court can, without altering the rates, reduce or increase the rent, as the case may be.

75. We have, in section 120, provided that, when a landlord is entitled under the foregoing sections to apply to have the rent of a holding settled, the rent of the holding, whether he applies and has it settled or it is merely ascertained, shall not be enhanced for fifteen years, except on the ground of an improvement made by the landlord or of an increase of the area of the holding.

76. Section 121, providing for the payment of expenses, has now been made applicable to the preparation of a record-of-rights as well as to the settlement of rents.

77. The only other provision of this chapter which appears to call for notice is the new section (122) which enacts that when the particulars of a tenancy have been recorded under the chapter, the well known presumption arising from twenty years' holding at a fixed rent shall cease to apply.

CHAPTER XI.

TABLES OF RATES.

78. We have been guided, in dealing with the subject of this chapter, by the views of the Government of Bengal. It appears from the enquiries that have been made that, owing to the great diversity of rates, it would in most parts of the country be impracticable to frame general tables of rates applicable to large tracts; but in special tracts the preparation of such tables may still, in the opinion of the Government of Bengal, be found a preferable alternative to the plan of a general settlement of rents by the Revenue-officer. In the latter case the Revenue-officer goes on the ground and himself decides all questions at issue. In the former case the Revenue-officer merely ascertains and records general facts which will serve as a guide to the Courts, whose business it will be to apply them to the circumstances of particular disputes brought before them. We have, therefore, retained the procedure with only a few minor alterations, but it will no longer be so important a feature as it was in the original Bill.

CHAPTER XII.

RECORD OF PROPRIETOR'S PRIVATE LANDS.

79. In dealing with the difficult question of khámár or zeraat land we have provided two alternative methods of procedure—

(*a*) that of survey and registration of such land by a Revenue-officer, by order of the Local Government;

(*b*) that of enquiry on the application of the individual landlord or tenant concerned.

The former procedure would apply to large areas where the question is important, the latter to disputes about particular plots of land. At the request of the Government of Bengal the two methods of procedure have been left equally applicable to any part of the country. We have made no distinction in the description of this land between Bengal and Bihár, but we have directed regard to be had in every case to local custom, and, while making it incumbent on the Revenue-officer to record certain lands as the proprietor's private land, have endeavoured to assist him by certain guiding rules in cases not clearly coming under these heads. The section is reproduced below.

Rules for determination of proprietor's private land.

138. (*1*) The Revenue-officer shall record as a proprietor's private land—

(*a*) land which is proved to have been cultivated as khámár, zeraat, sír, nij, nij-jot or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village-custom as proprietor's khámár, zeraat, sír, nij, nij-jot or kamat.

(*2*). In determining whether any other land ought to be recorded as a proprietor's private land the officer shall have regard to local custom and to the question whether the land was before the 2nd of March, 1883, specifically let as proprietor's private land, but shall presume that land is not a proprietor's private land until the contrary is shown.

(*3*). If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

CHAPTER XIII.

DISTRAINT.

80. The only changes made in this chapter to which it seems to us necessary to direct attention are the following:—

(*a*) Section 167 (*2*) of the original Bill, which made an application for distraint liable to the same Court-fee as a suit for the arrear of rent, has been omitted.

(*b*) Produce already stored has been exempted from distraint.

(*c*) The Court is empowered (section 141 (*3*) and (*4*)) to issue in certain cases an order prohibiting the removal of the produce pending the issue or execution of an order of distraint.

(*d*) It has been made clear (section 147) that crops which admit of being stored are not to be sold standing.

(*e*) Section 186 of the original Bill, which under certain circumstances imposed a penalty on persons on whose behalf an offence under section 185 is committed, has been omitted.

(*f*) On the other hand, express provision has been made in the first section of Chapter XIX for punishing abetment of the offences in question, and it has been made clear (section 158) that a person, whose property is distrained under cover of this chapter, but in a case to which it does not properly apply, has his remedy by suit against those who put the Court in motion.

(*g*) Section 187 of the original Bill, which empowered the Local Government to suspend the operation of the chapter, has been omitted.

CHAPTER XIV.

JUDICIAL PROCEDURE.

81. We have excluded suits for penalties and suits for the recovery of possession of land from the special procedure prescribed in sections 191-197 of the original Bill.

82. We have introduced at the opening of this chapter a section (159), modelled on a section in the Presidency-towns Small Cause Court Act, empowering the High Court, with the approval of the Local Government, to make rules declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant, or shall apply subject to modifications. We trust that as experience is acquired of the working of the Courts under the new Act it may be found possible to exercise this power so as to effect further simplifications in procedure.

83. For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent suits, we are unable to suggest anything of importance in this direction which would not involve a serious risk of failure of justice. In particular, while we are anxious to facilitate the service of summons and the proof of such service, we are unwilling to give any presumption of law against an absent defendant except on adequate proof of such service.

84. We have, however, with a view to avoiding, as far as possible, the complication and delay which arise from questions as to the landlord's title being raised in rent-suits, made an im-

portant amendment in the section (164) which requires a tenant, admitting that rent is due from him, but pleading that it is due not to the plaintiff but to a third person, to pay the amount into Court. Our object is to force the issue of disputed title to be raised separately and independently of the rent suit, and we have therefore provided that the Court shall, on the money being paid in, cause notice of the payment to be served on the third person, and unless he, within three months, institutes a separate suit against the plaintiff and obtains an order restraining the payment of the money, it will be paid out to the plaintiff on his application.

85. We have further added a section (165) providing that when a defendant in a rent suit admits that money is due from him to the plaintiff but disputes the amount, the Court shall, as a rule, require him to pay the amount admitted into Court.

86. We have provided (section 173) that when a plaintiff institutes a suit for the ejectment of a trespasser he may claim, as alternative relief, that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court.

87. Section 207 of the original Bill provided that a landlord or a tenant might institute a suit for the determination of the nature and incidents of the tenancy. We have (section 174) substituted the simpler and cheaper procedure of an application, and have empowered the Court, to which the application is made, to direct that a Revenue-officer shall make a local enquiry into any matter it thinks fit.

CHAPTER XVI.

SUMMARY SALE FOR ARREARS.

88. We have, in accordance with what we understand to be the desire of the landlords, maintained the provisions of the law relating to the sale of patní tenures substantially intact, amending them only in matters of form and minor detail. The provisions so amended have now been transferred from the Schedules to the body of the Bill, and form the first division of this chapter.

89. The second division of it consists of a single section enacting that, if provision is made by law for the registration in a public register of any tenures other than patní tenures, the provisions of the chapter shall, subject to such modifications as the Local Government may by rule prescribe, apply to those tenures.

CHAPTER XVII.

CONTRACT AND CUSTOM.

90. The important question as to the extent to which freedom of contract between landlord and tenant should be restricted has been disposed of, in so far as a few particular points are concerned, in the sections of the Bill relating to those points (see *e. g.* paras. 29, 30 and 48 *supra* on the subject of contracts fixing rent). But we have thought it convenient to collect in one section at the opening of this chapter most of the restrictions which, in the opinion of the majority of us, it is necessary to place on the power to contract out of the provisions of the law.

The matters which are thus placed beyond the reach of contract will be seen to be as follows:—

(*a*) The acquisition of the status of settled-raiyat and of the occupancy-right (sections 24, 25 and 26).
(*b*) The incidents of the occupancy-right specified in section 31.
(*c*) The occupancy-raiyat's right to demand a reduction of rent under section 51.
(*d*) The right of either landlord or tenant to demand a commutation of a produce-rent under section 53.
(*e*) The protection afforded by the Bill to a non-occupancy-raiyat or an under-raiyat from ejectment except on specified grounds (sections 58, 59, 60 and 63).
(*f*) The right of a tenant to a reduction of rent on account of a diminution of the area of his holding (section 66).
(*g*) The right of a raiyat to make improvements and claim compensation for them (sections 88, 89, 90 and 93).
(*h*) The protection afforded to all tenants against ejectment except in execution of a decree (section 98).

91. With a view to encouraging permanent mukarrarí leases we have inserted in this chapter a new section (211) providing that nothing in the Act shall be deemed to prevent a landlord in a permanently-settled estate from granting a permanent mukarrarí lease on any terms agreed on between him and his tenant.

92. It has been admitted throughout our discussions that lands held on reclamation-lease, chur or dearah lands, and lands taken under the customs known as *utbundi* and *hal-hasili* must be treated exceptionally, and the three following sections of this chapter are intended to make such special provision regarding them as appears to us to be necessary.

93. Section 212 provides that nothing in the Act shall affect any contract for the reclamation of waste-land.

94. Section 213 provides that a raiyat holding chur or dearah land shall not acquire a right of occupancy in the land until he has held it for twelve continuous years, and that until he acquires the right of occupancy he shall be liable to pay whatever rent is agreed on between him and his landlord, but that the Court may upon the application of either party declare that the land has ceased to be chur or dearah land, and thereupon the provisions of the Act shall apply to it.

95. Lastly, section 214 enacts that nothing in the Act shall affect the conditions, customary or otherwise, under which land is held on either of the systems known as the *utbundi* and *hal-hasili* systems.

96. As already stated (paragraph 4) we have omitted Chapter VII of the original Bill, which was intended to provide for the case of a raiyat holding his homestead otherwise than as a part of his holding as a raiyat. As, however, the absence of any mention of such tenancies in the Bill might give rise to misapprehension, we have thought it well to insert a section (216) expressly providing that their incidents will be regulated by local custom.

CHAPTER XVIII.

LIMITATION.

97. We consider that a moderately short period of limitation should be fixed for the recovery by an occupancy-raiyat of land comprised in his holding, and, following the precedent presented by section 81 of the Central Provinces Tenancy Act, 1881, we have fixed the period at two years from the date on which he is ejected, adding a proviso to guard against the revival of causes of action already barred.

CHAPTER XIX.

SUPPLEMENTAL.

98. We have somewhat amplified the provisions of section 221, which empowers a landlord to act through his agent, and in order to remove a misapprehension which, notwithstanding the definition of "landlord" contained in the Bill, we have found to exist in some quarters, we have added a section (222) to make it clear that, when two or more persons are joint landlords, they must act together or through an agent appointed by them jointly.

99. In the course of our discussions various points have been raised with which we felt that we were unable to deal adequately without further information than that contained in the papers before us. On some of these points we should be glad to receive the advice both of the Local Government and of the High Court.

The principal questions are as follows:—

(1) Whether, with reference especially to landlord's improvements, it is desirable to empower Revenue-officers to arrange for the cutting of irrigation channels, the distribution of water and the payment of compensation, and, if so, what form such provisions should take.
(2) What modifications it may be desirable to make, whether by rules or otherwise, in the Code of Civil Procedure, with a view to expedite the trial of rent suits; and in particular whether it is desirable that landlords should be empowered to institute, by means of a single plaint, suits for arrears against a number of raiyats holding independently of each other.
(3) Whether any provision can safely be enacted restricting the right to claim a re-trial when a decree has been given *ex parte*. We are aware that a judge is in no way bound to admit a re-trial unless he is satisfied that the summons failed to reach the defendant or that he was prevented by some sufficient cause from appearing, but the representations made to us are to the effect that the due service of the summons is systematically denied, and that the Courts too readily accept the plea, thus encouraging tactics the only object of which is to interpose delay and to involve the landlord in unnecessary expense in recovering his dues.

The proposal before us was that *ex parte* suits should not be re-tried except upon the defendant depositing the amount decreed, but we were unwilling to adopt this proposal on the information before us and desired that it should be referred for the consideration of the Hon'ble Judges of the High Court.

(4) A somewhat similar suggestion which has been made to us is that a defendant in a suit for arrears should not be allowed to appeal from a decree passed against him except on depositing the amount of the decree. On this suggestion, too, we should be glad to have the opinion of the Judges.

(5) A further point, and on this we desire to have the opinion of the Local Government, is whether the summary sale procedure can be applied to those independent talugs the revenue of which was settled direct with Government, though the holders pay it through the zamíndár. These tenures apparently find no place in the Government registers, and it was proposed that the modified *patní* procedure should be applied to them.

(6) A similar proposal was made to render this procedure applicable to the recovery of arrears of Road Cess and Public Works Cess from rent-free tenure-holders. We decided to refer this point also to the Local Government.

(7) The necessity for further information respecting the conditions on which bastu or homestead land is held has already been noticed (*supra* para. 4).

(8) We are also anxious to be informed if the saving of customary conditions which we have specifically applied to *utbandi* and *hal-hasili* tenures should be extended to similar tenures under other names, and also if any special saving is necessary in regard to the special tenures under which land is held in the Chittagong division.

(9) Again, we desire to be informed whether it would be possible to specify, for the purpose of exemption from the pre-emption sections, any such transferable occupancy-rights as those in guzashta and gora holdings.

(10) Finally, we desire that the Government of Bengal may be consulted as to the possibility of improving the accuracy of the price-lists which have been published during the past twelve years, and the probable effect of basing a system of enhancement of rent mainly on these prices.

100. The publication ordered by the Council has been made, as follows:—

In English.

Gazette.	*Date.*
Gazette of India	3rd, 10th and 17th March, 1883.
Calcutta Gazette	7th, 14th and 21st March, 1883.

In the Vernaculars.

Province.	*Language.*	*Date.*
Benga	Bengalí	24th April, 1883.
	Hindí	4th May, 1883.
	Uriya	17th May, 1883.

101. As we have already intimated, we are of opinion that the Bill as now amended should be republished.

S. C. BAYLEY.
RIVERS THOMPSON.
C. P. ILBERT.
G. H. P. EVANS.
J. W. QUINTON.
T. M. GIBBON.*
AMÍR ALÍ.
W. W. HUNTER.
H. REYNOLDS.*

I sign this report as a fair statement of the results of the deliberations of the Committee, but as I am opposed to the leading principles of the Bill and to many details, I record a separate dissent.

KRISTODÁS PÁL.

I am against the principles of the Bill *in toto*. I sign this report subject to the conditions mentioned by Hon'ble Raí Kristodás Pál, and only because I believe I am bound to sign it according to the rules.

DARBHANGÁ.

The 14th March, 1884.

* Subject to reservation on some points.

SCHEDULE.

Office Memorandum by Officiating Under-Secretary to the Government of India, Revenue and Agricultural Department, No. 484-116 R., dated 1st May, 1883, and enclosures [Papers No. 1].
From Under-Secretary to Government, Bengal, No. 1827-648 L. R., dated 13th July, 1883, and enclosures [Papers No. 2].
From Officiating Secretary to Government, Bengal, No. 1876-669 L. R., dated 18th July, 1883, and enclosures [Papers No. 3].
From Officiating Secretary to Government, Bengal, No. 1928-694 L. R., dated 24th July, 1883, and enclosures [Papers No. 4].
From Officiating Secretary to Government, Bengal, No. 2179-787 L. R., dated 13th August, 1883, and enclosures [Papers No. 5].
From Under-Secretary to Government, Bengal, No. 586 T. R., dated 24th August, 1883, and enclosures [Papers No. 6].
From Under-Secretary to Government, Bengal, No. 686 T. R., dated 3rd September, 1883, and enclosures [Papers No. 7].
Notes by Hon'ble T. M. Gibbon [Papers No. 8].
Memorial of Landholders of Eastern Bengal, dated 14th September, 1883, with notes [Paper No. 9].
From Rájá Promatha Natha Bahádúr of Dighapatia, No. 21, dated 20th September, 1883 [Paper No. 10].
From Under-Secretary to Government, Bengal, No. 822 T. R., dated 15th September, 1883, and enclosures [Papers No. 11].
From Officiating Secretary to Government, Bengal, No. 972 T. R., dated 27th September, 1883 [Paper No. 12].
From Under-Secretary to Government, Bengal, No. 1021 T. R., dated 1st October, 1883, and enclosure [Papers No. 13].
From Under-Secretary to Government, Bengal, No. 1083 T. R., dated 7th October, 1883, and enclosures [Papers No. 14].
Office Memorandum by Officiating Under-Secretary to Government of India, Revenue and Agricultural Department, No. 964 R., dated 10th October, 1883, and enclosures [Papers No. 15].
From Under-Secretary to Government, Bengal, No. 1117 T. R., dated 10th October, 1883, and enclosures [Papers No. 16].
From Under-Secretary to Government, Bengal, No. 1160 T. R., dated 13th October, 1883, and enclosures [Papers No. 17].
From Bábú Kishori Lál Sarkár, Calcutta, dated 18th October, 1883 [Paper No. 18].
From Under-Secretary to Government, Bengal, No. 1299 T. R. dated 27th October, 1883, and enclosures [Papers No. 19].
From Bábú Kishori Lál Sarkár, Calcutta, dated 3rd November, 1883 [Paper No. 20].
From Under-Secretary to Government, Bengal, No. 2321-837 L. R., dated 10th November, 1883, and enclosure [Papers No. 21].
From Under-Secretary to Government, Bengal, No. 2389-861 L. R., dated 16th November, 1883, and enclosure [Paper No. 22].
From Under-Secretary to Government, Bengal, No. 2395-863 L. R, dated 17th November, 1883, and enclosure [Papers No. 23].
Memorial from the Committee of the Orissa People's Association, dated 1st November, 1883 [Paper No. 24].
From Bábú Ráj Kissor Mukárjí, Uttarpára, dated 10th November, 1883, and enclosure [Papers No. 25].
From Honorary Secretary, Tirhút Landholders Association, No. 11, dated 13th November, 1883, and enclosure [Papers No. 26].
From Bábú Kishori Lál Sarkár, dated 17th November, 1883 [Paper No. 27].
From Secretary, Central Committee of Landholders of Bengal and Bihár, No. 118, dated 27th November, 1883, and enclosures [Papers No. 28].
Endorsement by Officiating Under-Secretary to Government of India, Revenue and Agricultural Department No. 1064, dated 5th December, 1883, and enclosures [Papers No. 29].
Memorial of certain Zamíndárs, Taluqdárs and Intermediate Landholders of Sherpur, Maimansingh district, dated 16th November, 1883 [Paper No. 30].
From Under-Secretary to Government, Bengal, No. 2670 954, dated 12th December, 1883, and enclosures [Papers No. 31].
From Secretary, British Indian Association, No. 123, dated 18th December, 1883, and enclosure [Papers No. 32].
From Secretary, Landholders Committee, Rájsháhi, dated December, 1883, and enclosure [Papers No. 33].
Endorsement by Assistant Secretary to Government, Bengal, Legislative Department, No. 2, dated 5th January, 1884, and enclosures [Papers No. 34].
From Under-Secretary to Government, Bengal, No. 2789-1001 L. R., dated 19th December, 1883, and enclosures [Papers No. 35].
From Under-Secretary to Government, Bengal, No. 182-45 L. R, dated 16th January, 1884, and enclosure [Papers No. 36].
Resolutions passed at Meeting of the Talanda Branch Indian Association, held on 16th January, 1884 [Paper No. 37].
From Secretary, Bhágulpur Landholders Association, No. 106, dated 9th January, 1884, and enclosures [Papers No. 38].
From Under-Secretary to Government, Bengal, No. 227-68 L. R., dated 21st January, 1884, and enclosure [Papers No. 39].
From Officiating Secretary to Government, Bengal, No. 540-231 L. R., dated 9th February, 1884, and enclosure [Papers No. 40].
From Honorary Secretary, Tirhút Landholders Association, No. 5, dated 9th February, 1884, and enclosure [Papers No. 41].

No. II.

THE BENGAL TENANCY BILL, 1884.

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Bengal Tenancy Bill.

(Chapter I.—Preliminary. Secs. 1—3.)

No. II.

Explanation of abbreviations in margin.

D. means Mr. Field's Digest.

C. B., the Bill prepared by the Commission.

B. B. the Bill submitted by the Bengal Government with letter No. 849, dated 27th July, 1881.

SECTION means the corresponding section of the Bill as introduced in March, 1883.

A Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the Territories under the Administration of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Section 1 (1). **1.** (*1*) This Act may be called the Bengal Tenancy Act, 1884.

Short title.

Section 1 (2). (*2*) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local Gazette, appoint in this behalf.

Commencement.

[C. B., s. 1. B. B., s. 1.] Section 1 (3). (*3*) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third part of the First Schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor General in Council, by notification in the local Gazette, extend the whole or any part of this Act to the Division of Orissa.

Local extent.

[C. B., s. 2. B. B., s. 2.] Section 2. **2.** (*1*) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation.

Repeal.

(*2*) When this Act is extended to the Division of Orissa, such of those enactments as are in force in that Division, or, where a part only of this Act is so extended, so much of them as is inconsistent with that part, shall be repealed in that Division.

(*3*) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

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

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

[D. § 1. C. B., s. 3. B. B., s. 3.] Section 3 (1). (*1*) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district:

Provided that the registration of a tenure under section 3(*2*) (*c*) of the Land Registration Act, 1876, shall not constitute it an estate within the meaning of this definition.

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[D. § 1. C. B., s. 3. B. B., s. 3.] Section 3 (2). (*2*) "Proprietor" means a person or a number of persons owning an estate.

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

Section 3 (4). (*4*) "Landlord" means a person or a number of persons immediately under whom a tenant holds.

[D. § 1. C. B., s. 3. B. B., s. 3. See s. 227.] Section 3 (10). (*5*) "Rent" means whatever is payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant.

Section 3 (11). (*6*) "Pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery."

Section 3 (13). (*7*) "Holding" means a parcel or parcels of land held by a tenant of a landlord under one lease or one set of conditions.

Section 3 (14). (*8*) "Agricultural year" means, where the Bengalí year prevails, the year commencing on the first day of Bysák, where the Faslí or Amlí year prevails, the year commencing on the first day of Asin, and, where any other year prevails for agricultural purposes, that year.

[D. § 20 & 37. C. B., ss. 6 & 16. B. B., ss. 6 & 15.] Section 3 (15). (*9*) "Permanent Settlement" means the Permanent Settlement of Bengal, Bihár and Orissa, made in the year 1793.

Section 3 (16). (*10*) "Transfer" includes sale, whether voluntary or in execution of a decree, and mortgage and gift.

Section 3 (17). (*11*) "Succession" includes both intestato and testamentary succession.

[C. B., s. 1. B. B., s. 3.] Section 3 (18). (*12*) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to.

Section 3 (20). (*13*) "Prescribed" means prescribed by the Local Government by notification in the official Gazette.

Section 3 (21). (*14*) "Collector" means the Collector of a District or any other officer appointed by the Local

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(Chapter II.—Classes of Tenants. Secs. 4 & 5.)

(Chapter III.—Tenure-holders. Secs. 6 & 7.)

Government to discharge the functions of a Collector under this Act.

Section 3 (22). (*15*) "Revenue-officer" in any provision of this Act means such officer as the Local Government may appoint to discharge the functions of a Revenue-officer under that provision.

[D., § 26. C. B., ss. 14 & 15. B. B., ss. 13 & 14.] Section 36. (*16*) "Patní tenure" means a tenure of the kind described in Schedule II annexed to this Act, and includes the darpatní and other similar tenures referred to in that schedule.

CHAPTER II.

CLASSES OF TENANTS.

Classes of tenants. **4.** There shall be, for the purposes of this Act, the following classes of tenants, namely:—

(1) Tenure-holders, including under-tenure-holders,

(2) Raiyats, and

Section 3 (6). (3) Under-raiyats, that is to say, tenants holding whether immediately or mediately under raiyats;

and the following classes of raiyats, namely:—

(*a*) raiyats holding at fixed rates, which expression includes raiyats holding either at a fixed rent or at a fixed rate of rent,

(*b*) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(*c*) non-occupancy raiyats, that is to say, raiyats not having such a right of occupancy.

Section 3 (4). **5.** (*1*) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder the right to collect rents, and includes also the successors in interest of persons who have acquired such a right and the persons who are to be deemed tenure-holders under section 37.

Meaning of tenure-holder and raiyat.

[D., § 1. C. B., s. 3. B. B., s. 3. ("raiyat" and "land.")] Section 3 (5). (*2*) "Raiyat" means primarily a person who has acquired land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and, subject to section 37, includes also the successors in interest of persons who have so acquired land.

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

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

(*a*) local custom;

(*b*) the provisions of section 37, with respect to raiyats who sub-let more than half their holdings; and

(*c*) the nature of the right of tenancy as originally acquired, that is to say, whether it was a right to collect rents or a right to cultivate land.

(*5*) Where the area of a holding exceeds 100 standard bíghás, and the whole or part of it is sub-let, the tenant shall be presumed to be a tenure-holder until the contrary is shewn.

CHAPTER III.

TENURE-HOLDERS.

Enhancement of rent.

Enhancement of rent. [D., s. 19. C. B., s. 7. B. B., s. 7.] Section 18. **6.** (*1*) Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

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

(*b*) that the tenure-holder, by receiving reductions of his rent, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

(*2*) A reduction of rent granted to a tenure-holder on account of diluvion or for land taken under the provisions of any enactment for the time being in force for the acquisition of land for public purposes or companies shall not be deemed a reduction within the meaning of this section.

[D., § 23. C. B., ss. 9 & 12. B. B., ss. 9 & 10.] Section 21. **7.** (*1*) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

Limits of enhancement of rent of tenures.

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

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

(*a*) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest;

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

(*c*) the cost and risks of collection.

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

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(Chapter III.—Tenure-holders. Secs. 8 to 16.)

[C.B., s. 10(a). B.B., s. 11(a).] Section 22.

8. Where the rent of a tenure-holder is liable to enhancement, the enhanced rent fixed under the last foregoing section shall not be more than double the rent previously payable.

Enhanced rent not to be more than double the previous rent.

[C.B., s. 10(a). B.B., s. 11(b).] Section 23.

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

Power to order gradual enhancement.

[C.B., s. 10(b). B.B., s. 11(c).] Section 24.

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

Rent once enhanced may not be altered for ten years.

Other incidents of tenures.

Other incidents of tenures.

[C. B., s. 13, B. B., ss. 12 & 13.] Section 25. Section 26.

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

Transfer and transmission of permanent tenures.

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

Permanent tenure-holder not liable to ejectment.

Patní tenures.

Patní tenures.

[D., s. 26. C. B., ss. 14, 15, B. B., s. 13.] Section 27 (2).

13. The holder of a patní tenure may, subject to the provisions of this Act, let the land comprised in his tenure or any part thereof.

Power of patnídar to sub-let.

14. (*1*) When a patní tenure is transferred, whether voluntarily, or by sale in execution of a decree, or by summary sale under this Act, the landlord may require the transferee to furnish substantial security to the amount of one half-year's rent of the tenure, for the payment of the rent and the fulfilment of the conditions of the tenure.

Right of landlord of patní tenure to demand security from transferees.

[D., § 29. C. B., s. 53(b). B. B., s. 45.] Section 40 (1).

(*2*) In the case of a transfer by sale in execution of a decree, or by summary sale, if security is demanded by the landlord from the purchaser under this section and is not furnished within one month from the date on which it is so demanded, the landlord may attach and hold possession of the tenure to the exclusion of the transferee until the security is furnished.

Section 40 (2).

(*3*) While an attachment under this section continues, the landlord may collect the rents from the under-tenure-holders or raiyats, and, after deducting therefrom the cost of the attachment, the expenses of collection and the rent due to himself, he shall hold the balance in trust for the purchaser.

(*4*) If the rents so collected are not sufficient to discharge the cost of the attachment, the expenses of collection, and the rent due to the landlord, the purchaser shall be liable for the deficiency, and the landlord may proceed against him for the recovery of the same.

Section 40 (3).

[D., § 28. C. B., s. 53(b). B. B., s. 45 (a).] Section 41 (1).

(*5*) If the security tendered under this section by any transferee is rejected by the landlord, the transferee may, within three months from the date of the rejection, apply to the Civil Court for an order directing the landlord to receive the security, and the Court, if satisfied of the sufficiency of the security tendered, may make such order, or, if not so satisfied, may make an order rejecting the application.

Section 41 (2).

(*6*) No appeal shall lie from any order under this section.

Registration.

Registration.

[D., § 25. C. B., s. 46. B. B., s. 37.] Section 27 (1).

15. (*1*) When a transfer of a permanent tenure (other than a transfer by sale in execution of a decree or by summary sale under this Act) or a succession to such a tenure, takes place, the landlord shall, subject, in the case of a patní tenure, to the provisions of the last foregoing section, register the same on the joint application of the transferor and transferee, or on the application of the person succeeding, as the case may be, and on payment by the applicant of the fee next hereinafter prescribed:

Registration of voluntary transfers and successions.

Provided that a landlord may, if he thinks fit, refuse to register a transfer of a tenure if any arrear of rent is due thereon.

[D., s. 27. C. B., ss. 47, 49. B. B., ss. 39, 41.] Section 27 (2).

(*2*) The fee payable on an application under this section shall be as follows, namely:—

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

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

Section 27 (3).

(*3*) If a landlord refuses to comply with any application under this section, he shall deliver to the applicant a statement in writing of the reasons for his refusal, and if he fails to do so the applicant may institute a suit to recover from him such sum by way of penalty not exceeding one hundred rupees as the Court thinks fit.

[C.B., ss. 47, 48 (c), B. B., ss. 39, 40 (c).] Section 28 (1).

16. (*1*) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure, require the purchaser to pay

Registration of transfer by sale in execution of decree other than decree for rent.

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into Court the registration fee prescribed by the last foregoing section and such further fee for service of notice of the sale on the landlord as may be prescribed by the rules under section 22.

Section 29 (2).

(*2*) When the sale has been confirmed, the Court shall forthwith cause to be served on the landlord a notice of the sale, requiring him to register the same, and informing him that the registration-fee has been received and will be paid to him on demand when the registration has been effected; and the landlord shall, in the absence of sufficient cause, forthwith comply with the requisition.

Section 30.

17. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, or by summary sale under this Act, the landlord shall register the transfer without any application or requisition being made to him in this behalf, and without the payment of any fee.

Registration of transfer by sale in execution of decree for rent or by summary sale.

. s. 10. B., ss. 46. (a) 49. B., ss. 37, (a) and 41.] ction 31.

18. (*1*) When a transfer of a permanent tenure (not being a transfer by sale in execution of a decree for arrears of rent or by summary sale under this Act) has taken place, the landlord may, until the transfer has been registered under this chapter, hold the transferor and transferee jointly and severally liable for arrears of rent accruing after the transfer.

Effect of omission to register.

(*2*) A person becoming entitled to a permanent tenure by transfer or succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the transfer or succession has been registered under this chapter, or a notice thereof has been served on the landlord in manner directed by rules under section 22.

B., s. 36. ., s. 44. ection (1).

19. (*1*) If a landlord refuses or neglects for a period of one month to register a transfer or succession which he is bound to register under the foregoing sections, the transferor or transferee, or, as the case may be, the person succeeding, may apply to the Civil Court to compel such registration.

Application to Court to compel landlord to register.

ection (2).

(*2*) The Court thereupon may issue a notice to the landlord, and, when the application is made by one party to a transfer, also to the other party or parties to the transfer, requiring him or them, as the case may be, to show cause, at a time and place therein specified, why the transfer or succession should not be registered.

ection (3).

(*3*) If sufficient cause as aforesaid is not so shown, the Court may make an order directing the landlord to register the transfer or succession, and the making of such an order shall have the same effect as if the transfer or succession had been registered.

(*4*) If sufficient cause as aforesaid is shown, the Court may refuse to make an order, or may make such order as in its opinion will meet the circumstances of the case.

[C.B., ss. 50 and 51. B.B., ss. 42 and 43.] Section 33 (1).

20. (*1*) When a transfer (other than a transfer by sale in execution of a decree or by summary sale under this Act) or a succession, registrable under the foregoing sections, has taken place, and no application is made for its registration within the six months following the date on which it has taken place, the landlord may apply to the Civil Court to authorize the registration of the transfer or succession and to compel the parties to the transfer, or the person succeeding, as the case may be, to pay the fee mentioned in section 15.

Application by landlord to compel registration.

Section 33 (2).

(*2*) The Court may thereupon issue a notice, calling on the parties to the transfer, or the person succeeding, as the case may be, to show cause, at a time and place specified in the notice, why the registration should not be made and why they or he should not pay the fee.

So

(*3*) If sufficient cause as aforesaid is not so shown, the Court may make an order authorising the landlord to register the transfer or succession, and directing the transferee, or the person succeeding, as the case may be, to pay the fee. The making of such an order shall have the same effect as if the transfer or succession had been registered, and the order so made shall, so far as it directs the recovery of the fee, have the force of a decree in a suit.

(*4*) If sufficient cause as aforesaid is so shown, the Court may refuse to make an order, or may [illegible] its opinion will meet the circumstances of the case.

21. When a transfer of, or a succession to, a tenure has been registered under the foregoing sections, every person to or from whom the tenure or any share thereof is transferred, or (as the case may be) every person succeeding to the tenure, shall be entitled to receive from the landlord as many copies as he may from time to time demand of the entry in the register relating to the tenure, certified by the landlord as a true copy: provided that for every copy so received he shall pay to the landlord such fee, not less than *one anna* or more than *one rupee*, as the Local Government may from time to time fix in this behalf.

Landlord to give copies of entries in the register.

22. (*1*) The Local Government may, from time to time, by rules consistent with this Act and published in the official Gazette, prescribe forms for the registers to be maintained under the foregoing sections, and generally the procedure to be followed in regard to registration.

Power to make rules regarding registration.

(*2*) In making any rule under sub-section (*1*) the Local Government may provide that any breach thereof shall be punishable with fine which may extend to fifty rupees.

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(Chapter IV.—Raiyats holding at fixed rates. Secs. 23.)

(Chapter V.—Occupancy-raiyats. Secs. 24—30.)

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

Incidents of holding at fixed rates.

23. A raiyat holding at a fixed rent or rate of rent—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as a tenure-holder, and

C. B., s. 13. [B. B., ss. 12 & 17.] Section 26.

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

CHAPTER V.

OCCUPANCY-RAIYATS.

General.

General. [B. B., s. 19 (1) & Expl. IV (*e*), proviso.] Section 44.

24. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land, shall, when this Act comes into force, have a right of occupancy in that land.

Continuance of existing occupancy-rights.

Section 47.

25. (*1*) Every settled raiyat of a village or estate shall have a right of occupancy in all land held by him as a raiyat in that village or estate.

Settled raiyats to have occupancy-rights.

Section 47.

(*2*) Every person who, being a settled raiyat of a village or estate, held land as a raiyat in that village or estate at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force.

Section 45 (*1*).

26. (*1*) Every person who for a period of twelve years whether wholly or partly before or after the commencement of this Act has continuously held as a raiyat land situate in any village or estate, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village or estate.

Definition of settled raiyat.

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

Section 45 (*1*).

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

Section 45 (*2*).

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

Section 45 (*3*).

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

Section 46.

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

(*7*) If a raiyat recovers possession of land under section 96, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

[B. B., s. 19, Expl. II.] Section 43.

Definition of village and estate.

27. For the purpose of the foregoing sections of this chapter—

(*a*) Village means an area included in a village map of the revenue-survey within the same exterior boundary, including such outlying portions (if any) as appear from the map to belong to the village, or, where no such maps have been prepared, such area as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested.

(*b*) Where two or more estates have been created by one or more partitions taking place, whether before or after the commencement of this Act, but since *the first day of January, 1855*, the area comprised in the parent estate of which they would have formed part if no such partition had taken place shall be deemed to be a single estate.

Section 56.

Effect of acquisition of occupancy-right by landlord.

28. If the landlord of a raiyat having a right of occupancy acquires, by purchase or otherwise, the interest of the raiyat, the occupancy-right shall cease to exist, but nothing in this section shall prejudicially affect the rights of any third person.

Special provisions as to joint owners and farmers.

29. (*1*) A person holding land as a raiyat shall not be prevented from acquiring an occupancy-right in the land by reason only that he is jointly interested in the land as proprietor or tenure-holder.

[D., § 40, Expls. I & V. C. B., s. 19, Expl. IV. B. B., s. 19, Expl. IV (*d*). Section 47, proviso.

(*2*) A person holding as an ijárádár or farmer of rents shall not by such holding acquire a right of occupancy in the land, but if a person acquires a right of occupancy in land he shall not lose it by subsequently holding the land in farm.

Saving as to khámár land.

[D., § 40, Expl. V. C. B., s. 19, Expl. 3 (*d*), Expl. (4) (*g*) B. B., s. 19, Expl. III (*b*), Expl. IV (*f*). Section 49.

30. Nothing in this Chapter shall confer a right of occupancy in a proprietor's private lands known in Bengal as khámár, nij or nij-jot, and in Bihár as zirat, nij, sír or kamat, where any such land is held under a lease for a term of years or under a lease from year to year.

Bengal Tenancy Bill.

(Chapter V.—Occupancy-raiyats. Secs. 31—35.)

[B. B., s. 69.] ection 50, cl. i).

. B. s. 77, . B., s. 69.] ection 50, cl.).

)., § 42. B., s. 21. (*c*).] ection 50, cl.).

C. B., s. 20

B., ss. 21 31, 69 .] ction 50, cl.).

C. B., s. 20 *a*), (*b*) and (*d*). B., s. 21 *a*) and (*b*).] ection 50, . (*f*)

D., § 40, note

. B., s. 71.] ection 50, (*e*).

D., § 41, note

. B., s. 20 (*c*). B., s. 21.).] ection 50, . (*g*)

Restrictions on transfer

Section 51 (*1*).

Section 51 (*2*).

Incidents of occupancy-right.

31. Where a raiyat has a right of occupancy in respect of any land, the following provisions shall apply, namely:—

(*a*) He may use the land in any manner which does not render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

(*b*) He may make improvements on the land as by this Act provided.

(*c*) He shall pay rent at fair and equitable rates.

(*d*) He shall not be ejected by his landlord from the land, except in execution of a decree for ejectment passed on the ground—

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

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

(*e*) He may surrender his holding in accordance with this Act.

(*f*) His right of occupancy in the land shall, subject to the rights reserved to the landlord by this Act, be capable of being transferred and bequeathed by will in the same manner and to the same extent as other immoveable property.

(*g*) He may, subject to the provisions of this Act, sub-let his land or any part thereof.

(*h*) His right of occupancy in the land shall, if he dies intestate in respect of it, descend in the same manner as any other immoveable property: provided that in any case in which, under the law of inheritance to which he is subject, his other property goes to the Crown, his right of occupancy shall be extinguished.

Restrictions on transfer.

Landlord's right of pre-emption on voluntary sale of occupancy-right.

32. (*1*) The right of a raiyat to sell his occupancy-right shall be subject to a right of pre-emption on the part of his landlord.

(*2*) For the purpose of enabling the landlord to exercise his right of pre-emption, the raiyat shall, if he intends to sell his occupancy-right to any person other than the landlord, file in the office of such Court or officer as the Local Government may appoint in this behalf, for service on the landlord, a written notice of his intention, stating the person to whom he intends to sell the right, the terms on which he intends to sell, and the incumbrances, if any, to which the right is subject, and shall defer proceeding with the sale until the expiration of six weeks from the date on which he files the notice.

(*3*) The Court or officer in whose office the notice is filed shall forthwith cause it to be served on the landlord in such manner as the Local Government may, from time to time, by rule direct.

Section 51, (*3*).

(*4*) The landlord may, within the period of six weeks from the date of the notice being filed, claim to purchase the occupancy-right from the raiyat at such price as may be agreed on between them, or, if they cannot agree on a price, at such price as may be fixed by the Civil Court on an application made to it in this behalf by the landlord within the said period of six weeks; and if the landlord so claims and, within one month from the date on which a price is agreed on or fixed by the court, tenders that price to the raiyat, the raiyat shall either abstain from selling the land, or sell it to the landlord at that price.

Section 51, (*4*).

(*5*) If a raiyat sells his occupancy-right to any person other than the landlord without having filed the notice required by this section, or within the period of six weeks from the date of the notice being filed, the sale shall be void as against the landlord.

(*6*) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring a Civil Court to associate with itself for the purpose of fixing the price of an occupancy-right under this section such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

[Act XIV of 1882, s. 310.] Section 52.

Landlord's right of pre-emption on sale in execution.

33. Where an occupancy-right is sold in execution of a decree, and two or more persons, one of whom is the landlord, respectively advance the same sum at any bidding, the bidding shall be deemed to be the bidding of the landlord.

Section 53, (*1*).

Landlord's right to take the place of mortgagee on foreclosure.

34. (*1*) Where an occupancy-right has been mortgaged by the raiyat and an order absolute for foreclosure is applied for in respect of it under section 87 of the Transfer of Property Act, 1882, the Court shall, if it proposes to make the order, cause a notice of the application to be served on the landlord, and shall defer making the order for a period of one month from the service of the notice. IV of 1882.

Section 53, (*2*).

(*2*) If the landlord within the said period of one month pays into Court the amount requisite to redeem the mortgage, the Court shall pay that amount to the plaintiff in the suit, declare the landlord entitled to stand in the place of the plaintiff, and pass an order absolute for foreclosure in favour of the landlord.

Section 53, (*3*).

(*3*) An order absolute passed under sub-section (*2*) shall have the same effect as if the landlord had been the mortgagee and the plaintiff in the suit.

Section 54, (*1*).

Restrictions on gifts of occupancy-right.

35. (*1*) A gift of an occupancy-right in land shall not be valid against the landlord unless it is made by a registered instrument.

(2) The registering officer shall not register any such instrument except on payment of the prescribed fee for service on the landlord of notice of the registration.

Section 54 (2). (3) When any such gift has been registered, the registering officer shall forthwith serve notice of the registration on the landlord.

(4) In the case of gifts made by Muhammadans, nothing in this section shall apply to a gift to a person within the prohibited degrees.

36. For the purpose of the last four foregoing sections the term landlord shall mean exclusively either—

Meaning of landlord for purposes of foregoing sections.

(*a*) a proprietor under whom immediately the land is held by the raiyat;

(*b*) a permanent tenure-holder under whom immediately the land is held by the raiyat; or

(*c*) any other tenure-holder under whom immediately the land is held by the raiyat, provided that such tenure-holder holds immediately under the proprietor or a permanent tenure-holder and is authorized in writing by the proprietor or permanent tenure-holder, as the case may be, to exercise the rights of a landlord for the purposes of the said sections.

Restrictions on sub-letting.

37. If the portion of his holding sub-let by an occupancy-raiyat exceeds more than half his holding, he shall, on being registered in a public register as a tenure-holder under any Act which may be passed for the registration of tenure-holders, be deemed to have become a tenure-holder within the meaning of this Act.

Conversion of sub-letting occupancy-raiyats into tenure-holders.

Provided as follows:—

(*a*) Nothing in this section shall apply to any person who is disabled from cultivation by age, sex, disease, accident or temporary absence from home on military or domestic service or a pilgrimage and who sub-lets his holding or any part thereof for a term not exceeding the duration of his disability;

(*b*) If a person is converted into a tenure-holder by virtue of this section his rent shall be liable to enhancement on the same terms and subject to the same conditions as if he were an occupancy-raiyat.

Explanation. A person who has been converted into a tenure-holder by virtue of this section does not by reason of the portion of his holding sub-let ceasing to be more than one-half the holding become again converted into a raiyat.

38. If an occupancy-raiyat sub-lets his holding or any part thereof, the sub-lease shall not be valid for a term exceeding seven years.

Restrictions on term of sub-lease.

Provided as follows:—

(*a*) Where a raiyat is disabled from cultivation by age, sex, disease, accident or temporary absence from his home on military or domestic service, or a pilgrimage, nothing in this section shall prevent him or be deemed to have prevented him from sub-letting his holding or any part thereof for a term not exceeding the duration of his disability;

(*b*) In the case of a sub-lease granted before the commencement of this Act the term of *seven* years shall for the purposes of this section be computed from the commencement of this Act.

Enhancement of rent.

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

Enhancement of rent.

Presumption as to fair and equitable rent.

[D., § 42, B. B., s. 21 (*d*).]

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

Section 58. [B. B., s. 21 (*d*).]

Restriction on enhancement of money rents.

Section 60.

41. (*1*) The money rent of an occupancy-raiyat may be enhanced by registered contract, subject to the following conditions:—

Section 59 (1).

Enhancement of rent by registered contract.

(*a*) The rent must not be enhanced so as to exceed by more than four annas in the rupee the rent previously payable by the raiyat.

Section 59 (2).

(*b*) The contract must fix the rent for a term of at least seven years.

(*c*) If the enhanced rent exceeds, by more than two annas in the rupee, the previous rent, the contract must fix the rent for a term of at least fifteen years.

(*2*) The registering officer shall, before registering a contract under this section, ascertain that the contract is in accordance with the provisions of this Act, and that the raiyat is competent and willing to enter into it, and understands its nature.

Section 59 (2).

42. (*1*) Where land which has been previously held by a tenant at a money-rent is let to a settled raiyat of the village or estate in which it is situate, the raiyat shall not be bound to pay for it any rent higher than that which was paid for it by the previous tenant, except in pursuance of a registered contract for enhancement of the rent.

Section 61.

Enhancement on re-letting.

(*2*) The provisions of the last foregoing section shall apply to every such contract.

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

[D., § 43 (1) and (2). C. B., s. 22 (1), (3) and (4). B. B., s. 23 (1), (3) and (4).]

Enhancement of rent by suit.

(*a*) That the rate of rent paid by the raiyat is below the prevailing rate payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity.

Section 74.

(*b*) That there has been a rise in the average prices of staple food crops in the locality or at the usual markets.

(*c*) That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(*d*) that the productive powers of the land held by the raiyat have been increased by fluvial action.

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

Rules as to enhancement on ground of prevailing rate.

(*a*) The enhanced rent shall not exceed the previous rent by more than eight annas in the rupee.

(*b*) If in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize by rule in that behalf.

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

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

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

Rules as to enhancement on ground of rise in prices.

(*a*) The Court shall have regard to the lists of prices periodically published under the authority of the Local Government, and shall compare the average prices during the quinquennial period immediately preceding the institution of the suit with the average prices during such other quinquennial period as it may appear equitable and practicable to take for comparison.

(*b*) The Court shall not enhance the rent so that the enhanced rent exceeds the previous rent by more than four annas in the rupee.

(*c*) Subject as aforesaid, and subject also to section 48, the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last quinquennial period bear to the average prices during the previous quinquennial period taken for purposes of comparison.

46. Where an enhancement is claimed on the ground of a landlord's improvement—

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

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

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

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

(ii) the cost of the improvement;

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

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

(*c*) The Court may make its decree conditional, and subject to review and reconsideration in the event of the improvement not producing the estimated effect within a specified time.

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

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

(*a*) The Court shall not take into account any increase which is merely temporary or casual.

(*b*) The enhanced rent shall not exceed the previous rent by more than four annas in the rupee.

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

48. The Court shall not in any case decree any enhancement which appears under the circumstances of the case to be unfair or inequitable.

Enhancement to be fair and equitable.

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

[C.B., s. 23 (*d*). B. B. s. 24 (*d*).] Section 77.

Power to order progressive enhancement.

50. (*1*) A suit instituted for the enhancement of the rent of a holding on the ground that the rent paid is below the prevailing rate, or on the ground of an increase in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if within the said period of fifteen years the rent has been commuted under section 53 or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or any ground corresponding thereto or dismissing the suit on the merits.

[B. B., 143.] Section 78.

Limitation of right to bring successive enhancement-suits.

(*2*) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

XIV of 1882.

Bengal Tenancy Bill.

(Chapter V.—Occupancy-raiyats. Secs. 51—54.)

(Chapter VI.—Non-occupancy-raiyats. Secs. 55—57.)

Reduction of rent.

Reduction of rent. [D., § 47. C. B., s. 25 (2) and (3). B. B., s. 25 (2) & (3).] Section 79.

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

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

(*b*) on the ground that there has been a fall in the average prices of staple food crops in the locality or at the usual markets.

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

Price-lists.

Price-lists. [C. B., 122. B.B., s. 145]. Section 83 (*1*).

52. (*1*) The Collector of every district shall prepare, at such time or times of the year as the local Government fixes in this behalf, lists of the market-prices at harvest-time of staple food crops grown in such local areas as the local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

Price-lists of staple crops.

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

Section 83 (*2*).

(*3*) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette.

Section 83 (*3*).

(*4*) Any such price-list so published shall, in any proceedings under this chapter, be conclusive evidence of the prices prevailing in the local area at the time to which it relates.

(*5*) The Collector shall, fifteen days before submitting a price-list to the Board of Revenue under this section, publish it within the local area to which it relates in the manner in which notices are usually published, and if any landlord or tenant of land within the local area within the said period of fifteen days presents to him in writing any objection to the list he shall submit the same to the Board of Revenue with the list.

Commutation.

Commutation. [C. B., s. 86. B. B. ss. 90 and 92.] Section 82 (*1*).

53. (*1*) Where an occupancy-raiyat pays rent for a holding in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

Commutation of rent payable in kind.

(*2*) The application may be made to the Collector, or sub-divisional officer, or to an officer making a settlement of rents under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.

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

(*4*) In making the determination the officer shall have regard to— Section 82 (2).

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

(*b*) the average value of the rent actually received by the landlord during the preceding ten years.

(*5*) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as other orders made by Revenue-officers.

(*6*) If the application is opposed, the officer may, for reasons recorded in writing, refuse to grant it.

Power to make rules.

Power to make rules. [C. B., ss. 122 and 23(c). B. B. ss. 145 and 24 (c).] Section 84.

54. The Local Government may, from time to time, subject to the control of the Governor General in Council, make rules—

Power to make rules.

(*a*) for the guidance of officers engaged in the preparation of price-lists under section 52;

(*b*) determining what food crops shall be deemed to be staple crops for the purposes of this chapter in any local area, and

(*c*) for the guidance of officers registering contracts under section 41 and section 42.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

Section 88.

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

Application of chapter.

Section 89.

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

Initial rent of non-occupancy-raiyat.

57. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 60.

Conditions of enhancement of rent.

Bengal Tenancy Bill.

(Chapter VI.—Non-occupancy-raiyats. Secs. 58—60.)

(Chapter VII.—Under-raiyats. Secs. 62—63.)

[C. B., s. 79 (5).] B. B., ss. 26, 72 (5).] Section 90.

58. A non-occupancy raiyat shall be liable to ejectment on one or more of the following grounds, and not otherwise:—

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

(*a*) On the ground that he has failed to pay an arrear of rent.

(*b*) On the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

(*c*) Where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired.

(*d*) On the ground that he has refused to agree to pay a fair and equitable rent determined under section 60 or that the term for which he is entitled to hold at such a rent has expired.

59. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

Conditions of ejectment on ground of expiration of lease.

60. (*1*) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat, unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

Conditions of ejectment on ground of refusal to agree to enhancement.

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

Sections 92 (*1*) and 93 (*1*).

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

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

Sections 92 (*2*) and 93 (*2*).

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

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

(*7*) If the raiyat agrees to pay the rent so determined he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy. Section 93 (*3*).

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

(*9*) In determining what rent is fair and equitable the Court shall have regard to the average rent payable by raiyats for land of a similar description and with like advantages in the vicinity, but shall not allow any enhancement exceeding eight annas per rupee of the previous rent.

(*10*) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed. Section 93 (*3*).

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

Explanation of "admitted to occupation."

CHAPTER VII.

UNDER-RAIYATS.

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

Limit of rent recoverable from under-raiyats.

(*a*) When the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and

(*b*) In any other case—twenty-five per cent.

63. An under-raiyat shall not be liable to be ejected by his landlord, except at the end of an agricultural year and after a written notice to quit has been served on him in the prescribed manner not less than six months before the expiration of that year.

Restriction on ejectment of under-raiyats.

Bengal Tenancy Bill.

(Chapter VIII.—General Provisions as to Rent. Secs. 64—67.)

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Rules and presumptions as to amount of rent.

Rules and presumptions as to amount of rent.

[D. §§ 20 & 37. C. B., ss. 6 & 16. B. B., ss. 6 & 15.] Section 14.

64. (*1*) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the holding.

Rules and presumptions as to fixity of rent.

[D. §§ 21 & 38. C. B., ss. 6 & 17. [B. B., ss. 6 & 16.] Section 15.

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

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

[D. § 38. C. B., s. 16. Expl. I. B. B., s. 15. Expl. I.] Section 16.

(*3*) When a raiyat has paid as rent a fixed share or the value of a fixed share of the produce of the land, the rent or rate of rent shall not be deemed to have been changed within the meaning of this section merely by reason of the amount paid having varied from year to year, or by reason of the rent having been commuted with the consent of both the raiyat and his landlord to a fixed money rent.

[D. § 37. C. B., s 16. Expl. II. B. B., s. 15. Expl. II.] Section 17.

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

[D. § 20. C. B., s. 6. B. B., s. 6.] Section 19.

(*5*) Nothing in this section shall apply where the land is held for a term of years or the tenancy thereof is determinable at the will of the landlord.

Section 120.

Presumption as to amount of rent and conditions of holding.

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

Alteration of rent on alteration of area.

Alteration of rent in respect of alteration in area.

Alteration of rent on alteration of area.

[D. §§ 19, 2 43 (3) & 47. C. B., ss. 8 18, 22 (2) & 25 (1). B. B., ss. 8. 18, 23 (3) 25 (1).] Section 96.

66. (*1*) Every tenant shall—

(*a*) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, and

(*b*) be entitled to a reduction of rent in respect of any diminution of the area of his holding caused by diluvion or otherwise, unless it is proved that the land lost was added to the area of the holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(*2*) In determining the amount to be added to the rent the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure.

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

Payment of rent.

Instalments of rent.

Payment of rent.

[C. B., s. 55 (*a*). B. B., s. 47 (*a*).] Section 97.

67. (*1*) A money-rent payable by a tenure-holder shall be paid in such instalments and on such dates as may have been agreed upon between the tenure-holder and his landlord; in the absence of agreement, in such instalments and on such dates as may be customary; and in the absence of any agreement or custom, in such instalments and on such dates as the Local Government may fix by rule for any local area.

[C. B., s. 53 (*b*). B. B., s. (*b*).] Section 98.

(*2*) A money-rent payable by a raiyat or under-raiyat shall be paid in such instalments, representing respectively such proportions of the yearly rent, and on such dates, not being more than four in each year, as the Local Government may fix by rule for any local area, and, subject to any such rules, as may be fixed by agreement, or in the absence of agreement, by custom.

[B. B., s. 49 (*b*).] Section 99(1)

(*3*) In making rules under this section the Local Government shall take into consideration the prevailing customs, the time of harvest, and the time at which land-revenue is payable.

Section 99(2)

(*4*) Every rule made under this section shall be published in manner prescribed not less than three months before the commencement of the agricultural year in which it is to take effect.

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(Chapter VIII.—General Provisions as to Rent. Secs. 68—73.)

Time and place for payment of rent.

68. (*1*) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

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

Provided that the Local Government may make rules authorizing a tenant to pay his rent by postal money-order.

[D. s. 101, C. B. s. 56, B. B., s. 48.] Section 3(*12*).

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

Appropriation of payments.

69. (*1*) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

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

Receipts and accounts.

ceipts d counts. , § 61. B., s. 57. B., s. 49 and (*b*).] tion 100.

Tenant making payment to his landlord entitled to a receipt.

70. (*1*) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

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

(*3*) The receipt and counterfoil shall specify the several particulars shown in the form of receipt given in Schedule III to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

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

B., s. 51 B., s. 49] tion 101

Tenant entitled to full discharge or statement of account at close of year.

71. (*1*) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge, signed by the landlord.

(*2*) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year, a statement of account specifying the several particulars shown in the form of account given in Schedule III to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

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

[D. s. 65, C. B, s. 57 (*d*), B. B. ss. 49 (*d*) & 94.] Section 102.

Penalties and fine for withholding receipts and statements of accounts and failing to keep counterparts.

72. (*1*) If a landlord refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 70 for any rent paid by the tenant, the tenant may, within six months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(*2*) If a landlord refuses or neglects to deliver to a tenant demanding the same the receipt in full discharge or the statement of account for any year prescribed in section 71, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(*3*) If a landlord fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

Deposit of rent.

Application to deposit rent in public office.

Deposit of rent.

[D., § 99, C. B ss. 58 & 59. B. B., ss. 50 & 51.] Section 103.

73. (*1*) In any of the following cases, namely:—

(*a*) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;

(*b*) when a tenant bound to pay money on account of rent has reason to believe that owing to a dispute or ill-feeling the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(*c*) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent in their behalf; or

(*d*) when the tenant entertains a *bond fide* doubt as to who is entitled to receive the rent;

the tenant may present, to such officer as the Local Government from time to time appoints in this behalf for the local area in which the holding is situate, an application in writing for permission to deposit in his office the full amount of the money then due.

(*2*) The application shall contain a statement of the grounds on which it is made; shall, in case (*d*),

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(Chapter VIII.—General Provisions as to Rent. Secs. 74—79.)

state the name of the person to whom the rent was last paid, and of the person or persons now claiming it; shall be signed by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount, not less than eight annas, as the Local Government from time to time by rule directs.

[D. §§ 99 & 100. C. B., s. 60. B. B., s. 52.] Section 104.

74. (*1*) If it appears to the officer to whom an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, he shall receive the rent and give a receipt for it under his official seal.

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

(*2*) The officer may, if he thinks fit, before receiving the rent, examine the person who has signed the statement required under the last foregoing section.

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

in case (*a*) of the last foregoing section, by the person to whom the rent was tendered;

in case (*b*) of that section, by the person specified in the application as the person to whom the rent was payable;

in case (*c*) of that section, by the co-sharers jointly; and

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

[D., § 100. C. B., s. 61 (*a*). B. B., s. 53 (*a*).] Section 105.

75. (*1*) The officer receiving the deposit shall forthwith cause to be affixed in a conspicuous place in his office a notification of the receipt thereof, containing a statement of all material particulars.

Notification of receipt of deposit.

(*2*) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the officer shall cause a notice of the receipt of the deposit to be served, free of charge, on every person who he has reason to believe claims or is entitled to the deposit.

[D. § 100. C. B., s. 61, cls. (*b*) & (*c*). B. B. s. 53, cls. (*b*) & (*c*). Sections 106 and 107.

76. (*1*) The officer may pay the amount of the deposit to any person appearing to him to be entitled to the same, or may, if he thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

Payment or refund of deposit.

(*2*) The payment may, if the Local Government so direct, be made by postal money-order.

(*3*) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the officer with whom the rent was deposited.

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

Arrears of rent.

77. (*1*) The rent of every transferable holding shall be a first charge on the holding.

Rent first charge on transferable holding.

(*2*) If the right, title and interest of the tenant is brought to sale in execution of a money decree obtained by a person other than the landlord, the landlord shall be entitled to be first paid out of the sale proceeds any rent which may be due to him by the tenant, but this right shall be without prejudice to the landlord's charge under sub-section (*1*).

[D., § 68. C. B., s. 90. B. B. s. 96.] Section 109.

Power to award damages on rent withheld without reasonable cause or to defendant improperly sued for rent.

[D., § 69. B., s. 91. B., s. 97.] tion 110.

Arrears o rent.

[C. B., s. 6 B. B., s. 56 Section 125

oduce- nts.

B., s. 84, B., s. 88.] tion 112.

78. (*1*) When an arrear of rent remains due in respect of a non-transferable holding at the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Fusli or Amli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

Ejectment from non-transferable holding for arrears.

[D. §§ 12 (5) & 93. C. B. ss. 79(& 152. B. B. ss. (5) & 169.] Section 111.

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

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

tion 113.

79. In fixing the rate of interest on an arrear of rent, the Court shall have regard to established usage and to the agreement, if any, between the parties; but shall ordinarily decree simple interest at the rate of twelve per centum per annum from the expiration of the agricultural year in which the arrear fell due to the institution of the suit.

Interest on arrears.

[D. § 101. C. B., s. 56. B. B., s. 48.] Section 108.

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(Chapter VIII.—General Provisions as to Rent. Secs. 80—85.)

80. (*1*) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

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

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

Produce-rents.

81. (*1*) Where rent is taken by appraisement or division of the produce—

Order for appraising or dividing produce.

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

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

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

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

(*3*) Where a Collector makes an order under this section, he may by order prohibit the removal of the produce until the appraisement or division has been effected.

82. (*1*) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selecting those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

Procedure where officer appointed.

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

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

Section 115 (*1*).

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

Section 115 (*2*).

(*5*) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final and shall be enforceable as a decree.

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

[C. B., s. 85, B. B., s. 89.] Section 118.

83. (*1*) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

Rights and liabilities as to possession of crop.

(*2*) Where rent is taken by division of the produce, the tenant shall be entitled to exclusive possession of the whole produce until it is divided.

(*3*) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord, but shall not be entitled to remove any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time.

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

Liability for rent on change of landlord.

84. (*1*) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has given notice of the transfer to the tenant.

Liability for rent on change of landlord.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

[D., §. 9. C. B., s. 75. B. B., s. 70.] Section 122.

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

Illegal Cesses, &c.

85. All impositions upon tenants under the denomination of *abwab*, *mahtut*, or other like appella-

Illegal cesses, &c.

Abwab, &c., illegal.

[D. §§ 13 & 57 C. B., s. 71 B. B., s. 62 (2).] Section 123.

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(Chapter VIII.—General Provisions as to Rent. Secs. 86.)

(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants. Secs. 87 & 91.

tions, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

[D., § 64. B. B., ss. 63 (2), 64 (a), 93.] Section 124.

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

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

Improvements. [C. B., s. 20. B. B., s. 30.] Section 126.

87. (*1*) For the purposes of this Act the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the letting-value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

Definition of improvement.

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

(*a*) the construction of wells, tanks and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(*b*) the preparation of land for irrigation;

(*c*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(*d*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto; and

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

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

88. Where a raiyat holds at a fixed rent or a fixed rate of rent, his landlord shall not be entitled, as such, to prevent him from making any improvement in respect of his holding.

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

89. (*1*) Where a raiyat has an occupancy-right in his holding neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

[C. B., s. 77. B. B., s. 69.] Section 127.

Right to make improvement in case of occupancy-holding.

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

(*3*) If a question arises between the raiyat and his landlord—

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

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

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

90. (*1*) A non-occupancy raiyat shall be entitled to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

[C. B., s. 77. B. B., s. 69.] Section 128.

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

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

91. (*1*) A landlord may register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making, by application to such Revenue-officer as the Local Government may appoint.

Registration of landlord's improvements.

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

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(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants. Secs. 92—95.)

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

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

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

92. (*1*) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon record the evidence in the presence of the parties, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

Application to record evidence as to improvement.

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

93. (*1*) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been made.

[C. B., ss. 20 and 29.] Section 129.

Compensation for raiyats' improvements.

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

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

(*4*) Improvements made by a raiyat between the 2nd day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

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

94. (*1*) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

Section 181.

Principle on which compensation is to be estimated.

(*a*) to the amount by which the letting-value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(*b*) to the condition of the improvement, and the probable duration of its effects;

(*c*) to the labour and capital required for the making of such an improvement;

(*d*) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

(*e*) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

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

Surrender and abandonment.

95. (*1*) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his right and interest in the holding.

Surrender and abandonment. [D. § 12. C. B., s. 7[illegible]. B. B., s. [illegible]. (3).] Section [illegible].

Surrender.

(*2*) But, notwithstanding the surrender, the raiyat shall continue to be liable for the rent of [illegible] the agricultural year next following the [illegible] of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(*3*) In the following cases the Court shall for the purposes of this section presume, until the contrary is shown, that such notice was so given, namely:—

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

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

(*c*) if the landlord himself, at any time during the agricultural year next following the surrender, lets to another tenant or cultivates the holding or any part thereof.

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

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

[D. s. 12 (4). C.B., s. 79 (4) B.B., s. 72 (4).] Section 140.

96. (*1*) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

Abandonment.

(*2*) When a landlord enters under this section he shall cause a notice in the prescribed form to be published in such manner as the Local Government by rule directs, stating that he has treated the holding as abandoned and has entered on it accordingly.

(*3*) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may order recovery of possession on such terms, if any, with respect to compensation to persons injured as to the Court may seem just.

Sub-division of holding.

Sub-division of holding. [B. B., ss. 21 (*b*), 37.] Section 150.

97. Nothing in this Act shall entitle a tenant whose holding is transferable to transfer or bequeath, without the consent of his landlord, a portion only of the land comprised in the holding so that it may be held from the landlord by the transferee or the person to whom it is bequeathed as a separate holding.

Portion of holding not transferable.

Ejectment.

Ejectment. [C. B., s. 79 (5), (6) & (7). B. B., s. 72 (5), (6) and (7).] Section 149.

98. No tenant shall be ejected from his holding except in execution of a decree.

No ejectment except in execution of decree.

Measurements.

Measurements. [D. § 58. C.B., s. 75. B. B., s. 67.] Section 133.

99. (*1*) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him on this behalf, enter on and measure all land comprised in his estate or tenure.

Landlord's right to measure land.

(*2*) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases:—

(*a*) Where the area of the holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area.

(*b*) Where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation.

(*c*) Where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

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

[D. s. 94. [B.B., ss. 1[illegible] & 177.] Sections 13[illegible] and 135.

100. (*1*) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

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

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

[D. § 94. C B., s. 76(6) B.B., s. 68 (*a*).] Section 137

101. (*1*) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made according to the Government measure of 14,400 square feet to one standard bighá

Standard of measurement.

(*2*) If the rights of the parties are regulated by any different local measure, the Government measure shall be converted into the local measure, for the purposes of the suit.

[D. § 98. C. B., s. 76 (B.B., s. 68(*b*. Section 138.

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

Managers.

Managers [D. § 16. C. B., s. 56 (B. B., s. 57 (1)] Section 142.

102. When co-owners of an estate or tenure disagree as to the management thereof, and in consequence there has ensued, or is likely to ensue,

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

(*a*) inconvenience to the public, or

(*b*) injury to private rights,

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

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

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

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

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

Power to appoint manager if order is not obeyed.

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

(*b*) in any case appoint a manager.

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

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

106. In any case in which the Court of Wards undertakes the management of an estate or tenure under section 104, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immoveable property shall apply to the management.

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

107. (*1*) A manager appointed under section 104 shall receive by way of remuneration such fixed salary or percentage of the money collected by him as manager as the District Judge from time to time directs.

Provisions applicable to manager.

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

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

(*4*) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(*5*) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(*6*) He shall pass his accounts at such period and in such form as the District Judge may direct.

(*7*) He may make any application which the proprietors could make under section 112.

(*8*) He shall be removeable by the order of the District Judge, and not otherwise.

[C.B., s 68. B. B., s. 60.] Section 148.

108. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 104, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

Power to restore management to co-owners.

109. The High Court may from time to time make rules defining the powers and duties of managers under the foregoing sections.

Power to make rules.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

Record-of-rights.

Record-of-rights. Section 164.

110. (*1*) The Local Government may in any case with the previous sanction of the Governor General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a record-of-rights shall be prepared for all tenancies or any class of tenancies in a local area by Revenue-officers to be from time to time appointed by the Local Government.

Power to order preparation of record-of-rights.

(*2*) The cases in which an order may be made under this section without the previous sanction of the Governor General in Council are the following, namely:—

(*a*) where the landlord or a large proportion of the landlords or of the tenants applies for such an order and deposits for the payment of expenses such amount as the Local Government directs;

(*b*) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally; and

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(Chapter X.—Record-of-rights and Settlement of Rents. Secs. 111—117.)

(*c*) where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards.

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

Section 164.

111. Where an order is made under the last foregoing section the particulars to be recorded shall be specified in the order, and may include some or all of the following, namely :—

Particulars to be recorded.

(*a*) the name of each tenant ;

(*b*) the class to which he belongs, that is to say whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy raiyat or under-raiyat ;

(*c*) the situation, quantity and boundaries of the land held by him ;

(*d*) the name of his landlord ;

(*e*) the rent payable ;

(*f*) the mode in which that rent has been fixed, whether by contract, by order of a Court or otherwise ;

(*g*) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases ;

(*h*) the special conditions, if any, under which the tenant holds.

112. On the application of a proprietor or tenure-holder, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

Power for Revenue-officer to record particulars on application of proprietor or tenure-holder.

Sections 157 to 159.

113. (*1*) When the Revenue-officer has completed the record he shall cause a draft thereof to be locally published in such manner and for such period as the Local Government by rule directs, and shall receive and consider any objection which may be made to any entry therein during the period of publication.

Publication of record.

(*2*) After the expiration of this period the Revenue-officer shall finally settle the record, and shall cause it to be locally published in such manner as the Local Government by rule directs, and such publication shall be conclusive evidence that the record has been duly made under this Chapter.

114. If at any time before the final publication of the record under the last foregoing section a dispute arises as to the correctness of any entry which the Revenue-officer proposes to make or has made therein, the Revenue-officer shall hear and decide the dispute, and for that purpose shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and his decision shall have the force of a decree.

Procedure in case of dispute as to entries in record.

Section 156.

XIV of 1882.

115. (*1*) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under the last foregoing section.

Appeals from decisions of Revenue-officers.

(*2*) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under the last foregoing section, and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

XIV of 18 ection 153.

(*3*) Subject to the provisions of Chapter XLII of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge as if he were a Court subordinate to the High Court within the meaning of the first section of that Chapter.

XIV of 18 ection 153.

116. (*1*) Every record made under this Chapter shall distinguish between the disputed and the undisputed entries therein

Undisputed entries in record to be presumptive evidence.

Section 16 XIV of 1882.

(*2*) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

Settlement of rents.

117. (*1*) The Local Government may, if it thinks fit, in any of the cases next hereinafter mentioned, make an order directing that the rents of all tenants or of any class or classes of tenants in any local area shall be settled by Revenue-officers to be from time to time appointed by the Local Government in this behalf :

Power to order Revenue-officers to settle rents.

Settlement of rents. Section 15

Provided that the Local Government shall not make such an order until it is satisfied after local enquiry that the making of the order would be expedient.

(*2*) The cases in which an order may be made under this section are the following, namely :—

(*a*) any case in which a Revenue-officer may be directed under this Chapter to prepare a record-of-rights, and

(*b*) where a settlement of revenue is being made in respect of the local area.

(*3*) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made, and an order so notified shall continue in force until it is rescinded by an order notified in like manner.

(*4*) While an order under this section continues in force in respect of any tenants, a Civil Court shall not entertain a suit under this Act for the enhancement or reduction of the rents of any of those tenants.

Section 1

Bengal Tenancy Bill.

(Chapter X.—Record-of-rights and Settlement of Rents. Secs. 118—122.)
(Chapter XI.—Tables of Rates. Secs. 123 & 124.)

118. (1) When a Revenue-officer is directed under this Chapter to make a settlement of rents he shall ascertain and make a record of the particulars specified in section 111, and such other particulars, if any, as the Local Government may direct him to ascertain and record.

Procedure for settlement of rents.

(2) If at any time before the rent-roll is finally published as hereinafter provided, a dispute arises as to the correctness of any entry which the officer has made or proposes to make in the record under sub-section (1), the provisions of sections 114 and 115 shall apply.

(3) In the case of a tenure the rent of which is liable to alteration, or an occupancy-raiyat's holding, the officer shall, on the application of either landlord or tenant, settle a fair and equitable rent in respect thereof.

(4) For this purpose he shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in settling rents.

(5). In all proceedings under sub-sections (3) and (4) the officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure, and his decision in every such proceeding shall have the force of a decree.

(6). An appeal shall lie from every such decision to the Special Judge appointed under section 115, whose decision thereon shall be final, subject to this qualification, that if in a second appeal under sub-section (2) of this section the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any holding has been settled, the Court may settle a new rent for the holding, but in so doing shall be guided by the rents of the other holdings of the same class comprised in the same rent-roll, as ascertained or settled under this section.

(7) When the Revenue-officer has recorded the particulars and settled the rents which he is required to record and settle, he shall prepare the draft of one or more rent-rolls, showing the particulars recorded by him, and, when he settles the rent, the amount of the rent as settled.

(8) Section 113 shall apply to every rent-roll made under this section as if it were a record within the meaning of that section, and section 116 shall apply to all entries made in any such rent-roll under sub-section (1) of this section.

119. When any rent is altered under the last foregoing section, the alteration shall take effect from the beginning of the agricultural year next after the final publication of the rent-roll.

Time at which alteration of rent is to take effect.

120. When a landlord is entitled to apply to have the amount of the rent of a holding settled under section 118, sub-section (3), the rent of the holding as ascertained or settled under this chapter shall not be enhanced during a period of fifteen years from the date of the final publication of the rent-roll, except on the ground of a landlord's improvement or of an alteration in the area of the holding.

Period for which rents as settled are to remain unaltered.

Supplemental.

121. Where an order is made under this chapter on the application of a landlord, or of several landlords or tenants, or for the purpose of settling or averting a serious dispute between tenants and their landlords, all expenses incurred by the Government in carrying out the provisions of this chapter in any local area, including the salaries of all officers employed exclusively in carrying out those provisions therein, and such portions as the Local Government may, from time to time, fix of the salaries of officers employed in carrying out those provisions therein in addition to their other public duties, shall be defrayed by the landlords and tenants in that local area whose rents are ascertained or settled under this chapter, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine ; and the proportion of those expenses so to be defrayed by any person shall be recoverable from him as if it were an arrear of revenue due by him.

Expenses of proceedings under Chapter

Supplemental. Section 163.

122. When the particulars mentioned in section 111, clause (*d*), have been recorded under this chapter in respect of any tenancy, the presumption under section 64 shall not thereafter apply to that tenancy.

Presumption as to fixity of rent not to apply where record has been prepared.

CHAPTER XI.

TABLES OF RATES.

123. The Local Government may, by an order in the official Gazette, direct a Revenue-officer to take steps to prepare for any local area, with the aid of such assessors as the Local Government may appoint in this behalf, a table showing for each class of land comprised in that area the rate of rent fairly and equitably payable by occupancy-raiyats.

Power to direct preparation of table.

[B. B., ss. 131 & 132.] Section 62.

124. The table shall specify—

Contents of table.

[B. B., s 133.] Section 63

(*a*) the several classes of land for which, having regard to the nature of the soil, situation, means of irrigation and other like considerations, it is necessary to fix different rates of rent ; and

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(Chapter XI.—Tables of Rates. Secs. 125—134.)

[B.B., s. 133.] Section 64.

(*b*) the rate of rent fairly and equitably payable by occupancy-raiyats holding land of each such class;

Principle on which rent-rates are to be fixed.

125. In fixing the rate of rent for any class of land under section 124 regard shall be had—

(*a*) to the rates of rent ordinarily payable by occupancy-raiyats for land of that class at the time when the table is prepared;

(*b*) to the average prices of staple food crops in the locality or at the usual markets about the time at which those rates were fixed, or, if that time or the average prices about that time cannot readily be ascertained, to the average prices about any other time which it may appear equitable and practicable to take for the purpose of comparison;

(*c*) to the average prices of staple food crops in the locality or at the usual markets at the time at which the table is prepared; and

[C. B., s. 23, (*b*). B. B., s. 24, *b*).]

(*d*) to the following rule, namely, that when the rate of rent for any class of land is raised on account of an increase in the average prices of staple food crops the new rate shall not bear to the old rate a higher proportion than the increased average prices bear to the former average prices;

[C.B., s. 23, (*c*). B. B., s. 24, (*c*).]

Provided that the rate fixed for any class of land shall not exceed the existing rate by more than four annas in the rupee.

[B.B., s. 137.] Section 65.

Local publication of the table.

126. When the Revenue-officer has prepared the table, he shall publish it in the local area to which it relates, in the vernacular language prevailing in that local area, in such manner as the Local Government may from time to time prescribe.

[B.B., s. 138.] Section 66.

Revenue-officer to deal with objections.

127. Any person objecting to any entry in the table may present a petition to the Revenue-officer within a period of one month after the publication; and the Revenue-officer, with the aid of the assessors, shall consider any such objection, and may alter or amend the table.

[B.B., s. 139.] Section 67.

Table to be submitted to superior Revenue-authorities.

128. If no objection is made within the said period of one month, or, where objections are made, after those objections have been disposed of, the Revenue-officer shall submit the table, together with his proceedings, a report setting forth the grounds of his decision on each point, and any petitions of objection which may have been received, through the Commissioner of the Division to the Board of Revenue for approval.

[B. B., s. 140.] Section 68.

Proceedings of Board of Revenue thereupon.

129. The Board of Revenue may amend the table submitted under the last foregoing section in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made, or may return the case for further enquiry.

[B. B., s. 141.] Section 69.

Publication of table after final sanction.

130. When a table of rates has been sanctioned by the Board, it shall be submitted to the Local Government, which, after considering such objections as may be submitted to it in writing, may amend the table in any manner it thinks fit, and may direct, if it thinks fit, that the table or amended table shall be published in the official Gazette with a specification of the local area to which it applies.

[B. B., s. 143. Section 70.

Period for which table remains in force.

131. A table for any local area published under the last foregoing section shall come into force on the date on which it is so published, and shall continue in force for such period, not less than fifteen or more than thirty years, as the Local Government at the time of publication may direct.

[B. B., s. 142. Section 71.

Table to be conclusive evidence.

132. The publication of a table under section 130 shall be conclusive evidence in any proceeding under this Act—

(1) that the proceedings for the preparation of the table have been duly conducted in accordance with this Act; and

(2) that, except as in this Act provided, the rates shown in the table for each class of land are the fair and equitable rates payable for land of that class by occupancy-raiyats within the local area to which the table applies.

Section 72.

Expenses incurred in preparing table how defrayed.

133. All expenses incurred by the Government in preparing a table of rates for any local area, including the salaries of all officers employed exclusively in its preparation, and such portions as the Local Government may from time to time fix of the salaries of officers employed in its preparation in addition to their other public duties, shall be defrayed by occupannecy-raiyats and their landlords in that local area in such proportions as the Local Government may from time to time determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable from him as if it were an arrear of land-revenue due by him.

[B. B., s. 144.] Section 73.

Suit to enhance where table is in force.

134. When a table is in force under the foregoing sections for any local area, the landlord of any holding within that area, held by an occupancy-raiyat at a money rent, may institute a suit to enhance the rent then payable on the ground that it is below that which would be payable at the rates shown in the table; and the Court

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(Chapter XII.—Records of Proprietor's Private Lands. Secs. 135—138.)

shall enhance the rent in accordance with the rates shown in the table: Provided that—

1st.—Where the rent of any land comprised in the holding would, by reason of a change having taken place in or in regard to the land since the raiyat or his predecessor in interest began to hold it, be fixed under this section at a higher rate, and would, but for that change, have been fixed under this section at a lower rate, the following rules shall apply, namely:—

(*a*) if the change has been effected solely by the agency or at the expense of the raiyat or his predecessor in interest, the Court shall fix the rent of that land at the lower rate;

(*b*) if the change has been effected partly by the agency or at the expense of the landlord or his predecessor in interest, and partly by the agency or at the expense of the raiyat or his predecessor in interest, the Court shall fix the rent of the land at such rate intermediate between the higher rate and the lower rate as, having regard to all the circumstances of the case, it thinks fair and equitable; and

(*c*) if it is not proved that the change has been effected by the agency or at the expense of the landlord or the raiyat, or the predecessor in interest of either of them, the Court shall fix the rent of the land at a rate equal to the lower rate, together with half the difference between the higher rate and the lower rate.

2ndly.—When the raiyat proves that by contract or by custom, or on some equitable ground, he is entitled to hold at a rate lower than the rate applicable under this section, the Court shall fix the rent at the lower rate.

3rdly.—Section 49 shall apply to all decrees for enhancement passed under this section, and section 50 shall apply to all suits for enhancement under this section as if they were suits for enhancement under Chapter V on the ground that the rent is below the prevailing rate or on the ground of an increase in prices.

Illustrations.

(*a*) The rates shown in the table for land of a certain description are—

when the land is irrigated from a well . Rs 4 per acre,
when the land is not so irrigated . . Rs. 2 „

The holdings of *A*, *B*, *C* and *D*, occupancy-raiyats, are composed of land of that description irrigated from wells constructed on these holdings respectively.

The well on A's holding is an ancient one existing from a time anterior to the tenancy: that on B's holding has been constructed by the landlord since the commencement of the tenancy: that on C's holding has been constructed by the raiyat: that on D's holding has been constructed by the landlord and raiyat, each contributing some portion of the labour and materials. The rents of the holdings of A and B must be fixed at Rs. 4 per acre, that of C's holding at Rs. 2 per acre, and that of D's holding at such rate intermediate between Rs. 2 and Rs. 4 as the Court thinks fair and equitable.

(*b*) The rates shown in the table for land of a certain description are as follows:—

when such land is irrigated from a branch of a river . . . . . Rs. 4 per acre,
when such land is not so irrigated . . Rs. 2 „

The holdings of E and F, occupancy-raiyats, are composed of land of that description, and were not irrigable until 40 years ago, when, owing to a change in the course of a neighbouring river, a new branch established itself contiguous to them. E has been in occupation of his holding 50 years, F only 30; the rent of E's holding must be fixed at Rs. 3, that of F's holding at Rs. 4.

CHAPTER XII.

RECORD OF PROPRIETOR'S PRIVATE LANDS.

[B.B. ss. 76 to 82.] Sections 7 to 13.

Power for Government to order survey and record of proprietor's private lands.

135. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of section 30.

Power for Revenue-officer to record private land on application of proprietor or tenant.

136. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Procedure for recording private land.

137. When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 113, 114, 115 and 116 shall apply.

[C. B., s. 81. B.B., ss. 3 & 75.] Section 5.

Rules for determination of proprietor's private land.

138. (*1*) The Revenue-officer shall record as a proprietor's private land—

(*a*) Land which is proved to have been cultivated as khámár, zírat, sír, nij, nij-jot or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village custom as proprietor's khámár, zírat, sír, nij, nij-jot or kamat.

(*2*) In determining whether any other land ought to be recorded as a proprietor's private land

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(Chapter XIII.—Distraint. Secs. 139—142.)

the officer shall have regard to local custom and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

CHAPTER XIII.

DISTRAINT.

[B B, ss. 101, 104, 123.] Section 166.

Cases in which an application for distraint may be made.

139. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator,

(*a*) any crops or other products of the earth standing or ungathered on the holding;

(*b*) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead:

Provided that an application shall not be made under this section—

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(*1*) by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or

(*2*) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or

[B. B., ss. 71, 125.]

(*3*) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord.

[B. B., ss 104-5.] Section 167.

Form of application.

140. (*1*) Every application under the last foregoing section shall specify—

(*a*) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;

(*b*) the name of the tenant;

(*c*) the period in respect of which the arrear is claimed;

(*d*) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable;

(*e*) the nature and approximate value of the produce to be distrained;

(*f*) the place where it is to be found, or such other particulars as may suffice for its identification; and

(*g*) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(*2*) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints; and, if the application so verified contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, that 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.

XIV of 1882.

[B. B., ss. 105 & 106.] Section 168.

Procedure on receipt of application.

141. (*1*) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(*2*) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(*3*) Where a Court cannot forthwith admit or reject an application under sub-section (*2*), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(*4*) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may if it thinks fit make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

[B.B. s. 10 Section 169.

Execution of order of distraint.

142. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by

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(Chapter XIII.—Distraint. Secs. 143—152.)

taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court:

[D. § 111.]

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

[B. B., s. 108.] Section 170.

Service of demand and account.

143. (*1*) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

(*2*) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(*3*) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on the outer door of the house in which he usually resides.

[B. B., ss. 109 and 110.] Section 171.

Right to reap, &c., produce.

144. (*1*) A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation.

(*2*) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(*3*) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

B. B., s.113.] ection 172.

Sale proclamation to be issued unless demand is satisfied.

145. (*1*) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained and the demand for which it is distrained, and notifying that he will, at a place and on a specified day, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction:

Provided that when the crops or products distrained from their nature admit of being stored but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(*2*) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

[B.B., s. 114.] Section 173.

Place of sale.

146. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the distraining officer is of opinion that it is likely to sell there to better advantage.

[D., s. 111.] Section 174.

When produce may be sold standing.

147. (*1*) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

(*2*) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

[B.B., s. 115.] Section 175.

Manner of sale.

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

[B. B., s. 116.] Section 176.

Postponement of sale.

149. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorised to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

[B. B., s. 117.] Section 177.

Payment of purchase-money.

150. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

[B. B., s. 118.] Section 178.

Certificate to be given to purchaser.

151. 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.

[B. B., s. 119.] Section 179.

Proceeds of sale how to be applied.

152. (*1*) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the

costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made by the Local Government in this behalf.

(2) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

[B. B., s. 120.] Section 180.

153. 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.

Certain officers may not purchase.

[B. B., ss. 111, 112 & 123.] Section 181.

154. (1) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 143, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn.

Procedure where demand is paid before the sale.

(2) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his tenant's sub-letting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

[B. B., s. 124.] Section 182.

155. (1) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Amount paid by under-tenant for his lessor may be deducted from rent.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

[B. B., s. 12 Section 183.

156. When land is sub-let, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

Conflict between rights of superior and inferior landlords.

Section 18

157. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid to the owner of the property under section 152 without the sanction of the Court by which the order of attachment or sale was issued.

Distraint of property which is under attachment.

158. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 140 in any case in which such an application is not permitted by section 139 may institute a suit against the applicant for the recovery of compensation.

Suit for compensation for wrongful distraint.

CHAPTER XIV.

JUDICIAL PROCEDURE.

159. (1) The High Court may, from time to time, with the approval of the Local Government, make rules declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

Power to modify Civil Procedure Code in application to landlord and tenant suits.

XIV of 1882.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits.

XIV of 1882.

Section 188

160. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the recovery of the land in respect of which the relation of landlord and tenant exists between the parties.

Jurisdiction in proceedings under Act.

XIV of 1882.

(2) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall

be made to the Court which would have jurisdiction to entertain a suit for the recovery of possession of the holding.

161. Every náib or gumáshta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending.

Náibs or gumáshtas to be recognized agents.

162. The particulars referred to in section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may from time to time prescribe in this behalf.

Special register of suits.

163. The following rules shall apply to suits for the recovery of rent:—

Procedure in rent-suits.

(a) Sections 121 to 127 (both inclusive), 129, 305, and 320 to 325C (both inclusive) of the Code of Civil Procedure shall not apply to any such suit.

(b) The plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent, and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification.

(c) The summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only.

(d) The service of the summons may, if the Court so directs, be effected, either in addition to or in substitution for any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866.

(e) A written statement shall not be filed without the leave of the Court.

(f) The rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply, whether an appeal is allowed or not.

(g) The Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears.

(h) Notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

XIV of 1882. [C. B., s. 198. B. B., s. 220.] Section 200.

164. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Section 199.

Payment into Court of money admitted to be due to third person.

(2) Where such a payment is made the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within *three months* from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff, money paid to him under sub-section (3):

165. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Payment into Court of money admitted to be due to landlord.

166. When a defendant is liable to pay money into Court under either of the last foregoing sections, if the Court thinks that there are sufficient reasons for ordering that the money be paid by instalments, it may take cognizance of the defendant's plea on his paying into Court such instalment as the Court directs.

Provision as to payment by instalments.

Section 199 (2).

167. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person as the case may be.

Court to grant receipt.

[D., § 179. C. B., ss. 157 & 220. B. B., ss. 173 & 242.] Section 198.

168. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

Appeals in rent-suits.

(a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

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(*Chapter XIV.—Judicial Procedure. Secs. 169—172.*)

(*b*) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity; and may pass such order as the District Judge thinks fit.

[C. B., ss. 96 & 98 (*b*). B. B., ss. 128 & 130, cl. (*b*).] Section 201.

Date from which decree for enhancement takes effect.

169. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing for special reasons a later date from which any such decree shall take effect.

[B. B., ss. 21 (*e*), 31, 44 & 45 Vic., C. 41, s. 14.] Section 202.

Relief against forfeitures.

170. (*1*) A suit for the ejectment of a tenant, on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment, shall not be entertained unless the landlord has requested the tenant, where the damage or breach is capable of remedy, to remedy the same, and, in any case, to pay reasonable compensation for the damage or breach, and the tenant has failed to comply within a reasonable time with that request.

(*2*) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the damage or breach, and whether, in the opinion of the Court, the damage or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the damage or breach is declared to be capable of remedy, to remedy the same.

(*3*) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (*2*).

(*4*) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the damage or breach is declared by the Court to be capable of remedy, remedies the damage or breach to the satisfaction of the Court, the decree shall not be executed.

Rights of ejected raiyats in respect of crops and land prepared for sowing.

[C. B., s. 80. B. B., s. 73.] Section 203.

171. The following rules shall apply in the case of every raiyat ejected from a holding:—

(*a*) When the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment.

(*b*) When the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value.

(*c*) But a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage.

(*d*) If the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

[C. B., s. 80. B. B., s. 73.] Section 204.

Adjustment of mutual claims in ejectment-proceedings.

Section 205.

172. (*1*) In all suits and proceedings for ejectment, the Court shall inquire into and determine all claims under this Act by the landlord against the tenant as such, or by the tenant against the landlord as such.

Section 206.

(*2*) If it appears to the Court that the amount payable by the landlord to the tenant as such exceeds the amount payable by the tenant to the landlord as such, the decree or order for ejectment (if any) shall, unless the landlord and tenant come to an arrangement regarding the payment of the excess sum, specify a time within which it must be paid into Court.

(*3*) If it is so paid within the time specified, the Court shall eject the tenant; and

if it is not so paid, the Court shall refuse to eject the tenant.

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(*Chapter XIV.—Judicial Procedure. Secs. 173 & 174*).

(*Chapter XV.—Sale for Arrears under Decree. Secs. 175—179.*)

Power for Court to fix fair rent as alternative to ejectment.

173. When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

B., s. 151. B., s. 168.] tion 207.

Application to determine incidents of tenancy.

174. (*1*) The Court having jurisdiction to determine a suit for the recovery of land held by a tenant may, on the application of either the landlord or the tenant, determine all or any of the following matters, namely:—

(*a*) the situation, quantity and boundaries of the land held by the tenant;

(*b*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under raiyat, and, if he is a tenure-holder, whether his rent is liable to enhancement; and

(*c*) the rent payable by him at the time of the application.

(*2*) If in the opinion of the Court any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government by rule directs.

IV of 882.

(*3*) The order on any application under this section shall have the effect of and be subject to the like appeal as a decree.

CHAPTER XV.

SALE FOR ARREARS UNDER DECREE.

General powers of purchaser as to avoidance of incumbrances.

175. Where a transferable holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as 'protected interests' but with power to annul the interests defined in this chapter as 'incumbrances.'

Provided as follows:—

(*a*) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;

(*b*) the power to annul shall be exerciseable only in manner by this chapter directed.

Protected interests.

[D. §§ 12 (11) and 155. C. B., ss. 226, Expl., & 210, B. B., ss. 228, Expl., & 232.] Section 208 (*1*).

176. The following shall be deemed to be protected interests within the meaning of this Chapter—

(*a*) any under-tenure existing from the time of the permanent settlement;

(*b*) any under-tenure recognized by the settlement proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

(*c*) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made;

(*d*) any right of occupancy;

(*e*) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and

(*f*) any right or interest which the landlord at whose instance the holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

Meaning of "incumbrance" and "registered and notified incumbrance".

177. For the purposes of this Chapter—

(*a*) the term "incumbrance" used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section.

Section 208, (*1*).

(*b*) The term "registered and notified incumbrance" used with reference to a holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by an instrument registered under the Indian Registration Act, 1877, and of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided.

[C. B., s. 206 Expl. B. B., s. 228 Expl.] Section 208 (*2*).

III of 1877.

Application for sale of holding.

178. When a decree has been passed for an arrear of rent due for a transferable holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attachment and sale of the holding in execution of the decree, he shall produce a statement of the annual rent of the holding, and, if the holding is a permanent tenure, a copy of so much of the register kept under Chapter III of this Act as relates to the tenure.

[C. B., s. 201. B. B., s. 223.] Section 209.

XIV of 1882.

Proclamation announcing sale.

179. (*1*) When an order has been passed for the sale of a holding upon an application made under the last foregoing section,

[D. § 152. C. B., s. 208. B. B., s. 225.] Section 210.

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(Chapter XV.—Sale for Arrears under Decree. Secs. 180--186.)

the proclamation made under section 287 of the Code of Civil Procedure shall, in addition to stating and specifying the particulars mentioned in that section, announce—

XIV of 1882.

(*a*) in the case of a tenure, that the tenure will first be put up to auction subject to the registered and notified incumbrances and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

(*b*) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(2) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published in such manner as the Local Government may, from time to time, direct in this behalf.

[C. B., s. 206. B. B., s. 228 (*a*) and Expl.] Section 211.

180. (*1*) When a tenure has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure shall be sold subject to such incumbrances.

Sale of tenure subject to registered and notified incumbrances, and effect thereof.

(2) The purchaser at a sale under this section may in manner provided by section 184, and not otherwise, annul any incumbrance upon the tenure not being a registered and notified incumbrance.

[C. B., s. 207 B. B., s. 229 (*a*) Section 212 (*1*).

181. (*1*) If the bidding for a tenure put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure shall be put up to auction and sold with power to avoid all incumbrances.

Sale of tenure with power to avoid all incumbrances, and effect thereof.

XIV of 1882.

[D., § 165. C. B., s. 210. B. B., s. 232.] Section 212 (2).

(2) The purchaser at a sale under this section may, in manner provided by section 184, and not otherwise, annul any incumbrance on the tenure.

182. The foregoing sections shall apply to a holding at a fixed rent or rate of rent as if it were a tenure.

Application of foregoing provisions to holdings at fixed rates.

[B. B., s. 228, (*b*).] Section 213.

183. (*1*) When an occupancy-holding has been advertised for sale under section 179, it shall be put up to auction and sold with power to avoid all incumbrances.

Sale of occupancy-holding with power to avoid all incumbrances, and effect thereof.

(2) The purchaser at a sale under this section may in manner provided by section 184, and not otherwise, annul any incumbrance on the holding.

Section 214.

184. (*1*) A purchaser having power to annul an incumbrance under any of the foregoing sections and desiring to annul the same, may, within one year from the date on which he first has notice of the incumbrance, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

Proceedure for annulling incumbrances under the foregoing sections.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for a service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

[B. B., s. 225 (*c*).] Section 215.

185. (*1*) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

[D. § 246. C. B., s. 211. B. B., s. 233.] Section 216.

186. (*1*) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say:—

XIV of 1882.

Rules for disposal of the sale-proceeds.

(*a*) There shall first be paid to the decree-holder the costs incurred by him in bringing the holding to sale.

(*b*) There shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made.

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(Chapter XV.—Sale for Arrears under Decree. Secs. 187—193.)

(Chapter XVI.—Summary Sale for Arrears. Sec. 194.)

(*c*) If there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the holding between the institution of the suit and the date of the sale, but not more than six months after the date of the final decree.

(*d*) The balance (if any) remaining after the payment of the rent mentioned in clause (*c*) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (*c*), the Court shall determine the dispute, and the determination shall have the force of a decree.

V of 32. § 153. B., s. 204. B., s. 226.] tion 217.

Holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.

187. (*1*) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a holding attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of a holding in execution of such a decree has been made, the holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the holding on the ground that the decree has been satisfied out of Court.

(3) Nothing in this section shall affect the right of any person to institute a suit to set aside the sale of a holding under this Chapter.

§§ 35, 36, B., s. 205. B., s. 227.] tion 218.

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the holding.

188. (*1*) When any person having, in a holding advertized for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,

(*a*) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per cent. per annum and secured by a mortgage of the holding to him;

(*b*) his mortgage shall take priority of every other charge on the holding other than a charge for arrear of rent; and

(*c*) he shall be entitled to possession of the holding as mortgagee and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

[D., §§ 35, 36, 154. C. B., s. 205. B. B., s. 227.] Section 219.

Inferior tenant paying into Court may deduct from rent.

189. When a holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and, that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

XIV of 1882. [C. B., s. 208 (1). B. B., s. 230 (1).] Section 220.

Decree-holder may bid at sale; judgment-debtor may not.

190. (*1*) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a holding is sold under this chapter may, without the permission of the Court, bid for or purchase the holding.

(2) The judgment-debtor shall not bid for or purchase a holding so sold.

XIV of 1882. Section 221.

Operation of sections 313 and 326 of Code of Civil Procedure excluded.

191. Sections 313 and 326 of the Code of Civil Procedure shall not apply to any sale under this Chapter.

Section 222.

III of 1877.

Registration of certain instruments creating incumbrances.

192. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any transferable holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

[C. B., s. 209 Expl. B. B., s. 231 Expl.] Section 223.

III of 1877.

Notification of incumbrances to landlord.

193. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a transferable holding and creating an incumbrance on the holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the manner prescribed in Part VII of the Indian Registration Act, 1877, for the service of summons.

CHAPTER XVI.

SUMMARY SALE FOR ARREARS.

Sale of patní tenures.

Sale of patní tenures.

[D., § 5. C. B., s. B. B., s. Section 224.

Right of proprietor to recover arrears from patnídár by summary sale.

194. If default is made in payment of the rent due in respect of a patní tenure held immediately from a proprietor, the proprietor

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Bengal Tenancy Bill.

(Chapter XVI.—Summary Sale for Arrears. Secs. 195—200.)

may, in addition to any other remedy given him by law, apply for the summary sale of the tenure in accordance with the rules contained in the following sections of this Chapter.

Bengal Regulation VIII of 1819, s. 8, cl. (2). Schedule III.

Application for sale at beginning of year.

195. (*1*) On the first day of Baisákh, that is, at the commencement of the following year from that for which the rent is due, the proprietor may present a petition to the Collector, containing a specification of any balances that may be due to him on account of the expired year, in respect of all or any of the tenures described in the last foregoing section.

(*2*) The petition shall then be stuck up in some conspicuous part of the Collector's office, with a notice that if the amount claimed is not paid before the first of Jeth following, the tenures of the defaulters will on that day be sold by public sale in liquidation.

(*3*) The proprietor shall cause a similar notice to be stuck up at his own sadr kachari and a copy or extract of such part of the notice as applies to the individual case to be sent and similarly published at the kachari at which the principal business of the tenure is transacted, or at the principal town or village on the land of the defaulter's tenure.

(*4*) The proprietor shall be exclusively answerable for the observance of the forms prescribed by this section.

Service of notice.

196. (*1*) The notice required to be sent into the mufassal shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager, for the same; or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

(*2*) If the people of the village object or refuse to sign their names in attestation, the peon shall go to the office of the nearest munsif, or, if there should be no munsif, to the nearest police-station, and there make voluntary oath of the same having been duly published. A certificate to this effect shall be signed and sealed by the said officers and delivered to the peon.

(*3*) If it appears from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the fifteenth day of the month of Baisákh, it shall be a sufficient warrant for the sale to proceed upon the day appointed.

Bengal Regulation VIII of 1819, s. 8, cl. (3). Schedule III.

Application for sale in middle of year.

197. On the first day of Kártik, in the middle of the year, the proprietor may present a similar petition, with a statement of any balances that may be due on account of the rent of the current year, up to the end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first day of Aghan, unless the whole of the advertised balance is paid before the date in question, or so much of it as will reduce the arrear, including any intermediate demand for the month of Kártik, to less than one-fourth or a four-anna proportion of the total demand of the proprietor, according to the kistbandí, calculated from the commencement of the year to the last day of Kártik.

Proceedings when tenure-holder contests demand.

198. (*1*) When a notice has been issued under the foregoing sections in respect of an arrear alleged to be due by a tenure-holder, the tenure-holder may, at any time before the day fixed therein for the sale of the tenure, present to the Collector a petition contesting the demand wholly or in part.

(*2*) The Collector on receiving a petition under sub-section (*1*) shall issue a summons to the proprietor requiring him to appear at a time and place specified therein, and show cause why the sale should not be stayed or the amount of the demand reduced, as the case may be, and shall, if practicable, hear the parties or such of them as appear, and determine the issues between them before the time fixed for the sale.

(*3*) If before the time fixed for the sale the Collector decides that no part of the arrear claimed is due, he shall dismiss the proprietor's application.

(*4*) If before that time he decides that any part of the arrear claimed is not due he shall reduce the demand accordingly, and his decision shall for the purposes of the proceedings under this chapter be conclusive.

(*5*) In cases not provided for by sub-sections (*3*) and (*4*) the tenure-holder's petition shall be dismissed, but such dismissal shall not affect his right to institute a suit to set aside the sale.

Tenure to be sold unless arrear deposited.

Bengal Regulation VIII of 18 s. 14.

199. Except as provided by the last foregoing section, a tenure in respect of which a notice has been issued under the foregoing sections shall be sold on the day fixed by the notice unless before sunset of the previous day the amount of the demand, or, when that amount has been reduced under the last foregoing section, the reduced amount has been deposited in the Collector's office by the defaulter or some other person for payment to the landlord.

Forms to be observed in case of sale.

Bengal Regulation, VIII of 18 s. 10. Schedule III.

200. (*1*) At the time of the sale, the notice previously stuck up in the kachari shall be taken down, and the lots be called up successively in the order in which they may be found in the notice.

(*2*) A person shall attend on the part of the proprietor with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, with the receipt for, or certificate of, the notice directed to be published in the mufassal.

(*3*) No lot shall be put up to sale until the statement produced has been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice has been read. The observance of these forms shall be recorded in a separate rubakari to be held upon each lot sold.

(*4*) If the sale is under a petition presented on the first day of Kártik the Kistbandí of the defaulter shall likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale; and the sale shall not take place unless this is ascertained.

(*7*) The proprietor shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, and the officer making the sale shall not be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Chapter.

engal Regulation VIII of 819, s. 9. chedule III.

Mode of conducting sale.

201. (*1*) All sales of tenures under this Chapter shall be made in public kachari.

(*2*) The land shall be sold to the highest bidder, and every one except the defaulter shall be free to bid.

(*3*) Fifteen per cent. of the purchase-money shall be paid immediately the lot is knocked down.

(*4*) The officer conducting the sale may refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours.

(*5*) If the fifteen per cent. is not paid in cash within two hours of the sale, or an equivalent amount in Government securities is not lodged, the lot shall be resold on the same day.

(*6*) If the remainder of the purchase-money is not paid by noon of the eighth day, notice shall be given of resale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the bázár of the sadr station of the district.

(*7*) The lot shall then be resold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per cent. already made, and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent sale; such deficiency to be levied by the process for the execution of decrees of the Civil Courts.

(*8*) The forfeited deposit shall be applied to defray the expenses of the sale, and the surplus shall be credited to Government.

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(Chapter XVI.—Summary Sale for Arrears. Secs. 201—205.)

Title of purchaser.

Bengal Regulation VIII of 1819, s. 15. Schedule III.

202. (*1*) When the entire amount of the purchase-money has been paid in by the purchaser of a tenure under this chapter, the Collector shall grant him a certificate of the payment.

(*2*) Thereupon the purchaser shall acquire the tenure with power to avoid, in manner prescribed by section 184 for the avoidance of incumbrances, all liens, sub-tenancies, easements and other rights or interests created on the tenure by the tenure-holder or any of his predecessors in interest or any person claiming under him or them, except—

(*a*) a right of occupancy;

(*b*) a right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; or

(*c*) any right or interest created under a power expressly conferred by the written instrument by which the tenure was created.

Purchaser to be put in possession.

Bengal Regulation VIII of 1819, s. 15. Schedule III.

203. When the purchaser of a tenure under this chapter has obtained a certificate in respect of the same under the last foregoing section, and the transfer of the tenure to him has been registered under Chapter III, he may apply to the Collector to put him in possession of the tenure, and the Collector shall thereupon put him in possession of the same, and for this purpose shall exercise all the powers conferred by the Code of Civil Procedure on a Civil Court giving possession to a purchaser at a sale in execution of a decree.

XIV of 1882.

Recovery of money deposited by person interested to stay sale.

Bengal Regulation VIII of 1819, s. 15. Schedule III.

204. When any person having in a tenure advertized for sale under this chapter an interest which would be voidable upon such sale deposits in the Collector's office the amount requisite under section 199 to prevent the sale, the provisions of section 188 shall apply, and if the person is a tenant inferior to the tenure-holder the the provisions of section 189 shall also apply, as if the tenure was a holding advertized for sale under Chapter XV, and the payment had been made into Court to prevent the sale..

Suit to set aside sale.

Bengal Regulation VIII of 1819, s. 14. Schedule III.

205. (*1*) Any person aggrieved by a sale of a tenure effected under cover of the provisions of this chapter but not warranted by those provisions may institute a suit against the proprietor, at whose instance the sale was effected, to set aside the sale and recover compensation for the damage caused to him thereby.

(*2*) The purchaser of the tenure shall be made a party to the suit, and shall, if the sale is set aside, be entitled to recover in the suit from the proprietor compensation for the damage (if any) suffered by him.

Bengal Tenancy Bill.

(Chapter XVI.—Summary Sale for Arrears. Secs. 206—209.)

(Chapter XVII.—Contract and Custom. Secs. 210—213.)

Bengal Regulation VIII of 1819, s. 17, cls. (5) and (6). Schedule III.

206. When a tenure has been sold under this chapter, any person having an interest therein which is under section 202 voidable by the purchaser may, within two months from the date of the sale, institute a suit against the defaulter to recover compensation for the damage caused to him by the sale:

Suit for compensation by person whose interest becomes voidable in consequence of sale.

Provided that no such suit shall be maintainable by any tenant inferior to the defaulter if at the time of the sale any arrear of rent was due from him.

Bengal Regulation VIII of 1819, s. 17. Schedule III.

207. (*1*) The proceeds of a sale under this chapter shall be dealt with as follows, namely:—

Disposals of proceeds of sales.

(*a*) One per cent. shall first be deducted from the proceeds, and shall be carried to the account of the Government, for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions of this chapter.

(*b*) The arrear on account of which the sale may have been made (with interest and all charges incurred in bringing the tenure to sale) shall next be paid to the landlord.

(*c*) The balance (if any) remaining after the payments prescribed by clauses (*a*) and (*b*) shall be forthwith sent by the officer conducting the sale to the Treasury of the Collector, to be there retained in deposit to answer the claims of persons who may obtain decrees for compensation under section 206, until the expiration of two months from the date of the sale, and if within that period any suits are instituted under that section, until all such suits have been finally decided.

(*d*) The balance retained under clause (*c*) shall be applied in the first instance to the payment of the amounts of the decrees (if any) passed against the defaulter under section 206, being distributed rateably among the decree-holders according to the amounts of those decrees, when it is insufficient to discharge those amounts in full.

(*e*) The residue (if any) of the said balance shall be payable to the defaulter.

(*2*) Any person interested in money deposited under clause (*c*) may withdraw the whole or any part thereof, on substituting Government securities, bearing interest, in lieu of the money so held in deposit; such securities to be taken at the rate of discount or premium of the day, as shown by the *Government Gazette* last received.

208. When any day specified in this chapter is a Sunday or holiday anything required or authorized under this chapter to be done on that day may be done on the next following day not being a Sunday or holiday.

Provision as to Sundays and holidays.

Sale of other tenures.

209. If provision is made by law for the registration in a public register of any tenures other than those saleable under the foregoing sections of this chapter, those sections shall, subject to such modifications as the Local Government from time to time by rule prescribes, apply to the tenures so registered.

Sale of other tenures

Modified application of Chapter to other registered tenures.

CHAPTER XVII.

CONTRACT AND CUSTOM.

210. The provisions of this Act in respect of the following matters shall take effect notwithstanding any contract to the contrary:—

Provisions to take effect notwithstanding contract.

(*a*) The acquisition of the status of a settled raiyat and of the occupancy-right (sections 24, 25 and 26).

(*b*) The incidents of the occupancy-right specified in section 31.

(*c*) The right of an occupancy-raiyat to demand a reduction of rent under section 51.

(*d*) The right of either landlord or tenant to demand a commutation of a produce rent under section 53.

(*e*) The protection afforded by the Act to a non-occupancy-raiyat and an under raiyat from ejectment except on specified grounds (sections 58, 59, 60 and 63).

(*f*) The right of a tenant to a reduction of rent on account of the diminution of the area of his holding (section 66).

(*g*) The right of the raiyat to make improvements and claim compensation for them (sections 88, 89, 90 and 93).

(*h*) The protection afforded to all tenants against ejectment except in execution of a decree (section 98).

211. Nothing in this Act shall be deemed to prevent a landlord in a permanently-settled area from granting a permanent mukarrarí lease an any terms agreed on between him and his tenant.

Permanent mukarrarí leases.

212. Nothing in this Act shall affect any contract for the reclamation of waste land.

Contracts for reclamation.

213. (*1*) Notwithstanding anything in this Act, a raiyat holding land of the kind known as chur or dearah, that is to say, land ordinarily liable to improvement or deterioration by fluvial action, shall not acquire a right of occupancy in the land until he has held the land for twelve continuous years; and, until he acquires a right of occupancy in the land, shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

Chur and dearah lands.

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(Chapter XVII.—Contract and Custom. Secs. 214—217.)

(Chapter XVIII.—Limitation. Secs. 218 & 219.)

(Chapter XIX.—Supplemental. Secs. 220—222.)

(*2*) But the Court may, on the application of either the landlord or the tenant, declare that any land has ceased to be chur or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

214. Nothing in this Act shall affect the conditions, customary or otherwise, under which land is held on either of the systems known as the "utbundi" system and the "hal-hasili" system.

Utbundi and hal-hasili systems.

ction 226.

215. Nothing in this Act shall affect any incident of a ghátwálí or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

Saving as to service-tenures.

ction 85.

216. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom.

Homesteads.

217. Nothing in this Act shall affect any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Saving of custom.

Illustration.

C. B., s. 19. xpl. 4 (*f*), B. B., s. 19, xpl. 4 (*e*), roviso.] ction 4.

The custom that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom accordingly, wherever it exists, will not be affected by this Act.

CHAPTER XVIII.

LIMITATION.

D., §§ 77, 78 79. B., s. 92. B., s. 98.] ection 224.

218. (*1*) The suits, appeals and applications specified in Schedule IV annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

Limitation in suits, appeals and applications in Schedule IV.

(*2*) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

219. Sections 7, 8 and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in section 218.

XV of 1877. [C. B., s. 93. B. B., s. 99.] Section 225

Portions of the Indian Limitation Act not applicable to such suits, &c.

CHAPTER XIX.

SUPPLEMENTAL.

Penalties.

220. (*1*) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,

[B. B., ss. 91, 122.]

Penalties for illegal interference with produce.

(*a*) distrains or attempts to distrain the produce of a tenant's holding, or

(*b*) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or

(*c*) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

XLV of 1860.

(*2*) Any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (*1*) shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

Agents and representatives of landlords.

221. (*1*) Any appearance, application or act, in, before or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent of the landlord empowered in this behalf by a written authority under the hand of the landlord.

Agents and representatives of landlords. Section 220.

Power for landlord to act through agent.

(*2*) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent of the landlord empowered as aforesaid to accept service of or receive the same, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(*3*) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

222. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both

Joint-landlords to act collectively or by common agent.

Bengal Tenancy Bill.

(*Chapter XIX.—Supplemental. Secs. 223—228.*)

or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Powers of Revenue-officers.

Powers of Revenue-officers. Section 227.

223. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

Power to make rules regarding procedure and powers of officers.

(*a*) any power exercised by a Civil Court in the trial of suits;

(*b*) power to enter upon any land, and to survey, demarcate and make a map of the same; and

(*c*) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil.

Rules.

Rules. Section 228.

224. (*1*) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

Procedure for making, publication and confirmation of rules.

(*2*) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and in the case of rules made by any other authority, in the prescribed manner: Provided that every such draft shall be published in the official Gazette.

(*3*) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(*4*) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*5*) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

Provisions as to temporarily-settled districts.

Provisions as to temporarily-settled districts. [C. B., ss. 6, Excep., & 17, Exception B. B., ss. 6, Excep., & 16, Exception.] Section 20.

225. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a fixed rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

Saving as to land held in a district not permanently settled.

226. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a fixed rent, and while the lease or contract is in force—

Power to alter rent in case of new assessment of revenue. Section 121.

(*a*) land-revenue is for the first time made payable in respect of the land, or

(*b*) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

Rights of pasturage, &c.

227. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

Rights of pasturage, forest-rights, &c. [D., § 82. C. B., s. 3. B. B., s. 3. "Rent" and "land."] Section 230.

Savings for special enactments.

228. Nothing in this Act shall affect—

Savings for special enactments. [D., § 2. C. B., s. 4. Report of Rent Commission, § 3. B. B., s. 4.] Section 4.

(*a*) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;

Savings for special laws.

(*b*) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue-authorities;

(*c*) any enactment relating to the avoidance of tenancies by a sale for arrears of the Government revenue;

(*d*) any enactment relating to the partition of revenue-paying estates; or

(*e*) any other special or local law not repealed either expressly or by necessary implication by this Act.

Bengal Tenancy Bill.

(*Schedule I.—Repeal of Enactments.*)

SCHEDULE I.

(*See Section 2.*)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
VIII of 1793	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamíndárs, independent taluqdárs, and other actual proprietors of land in Bengal, Bihár, and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52 53, 54, 55, 64 and 65.
XII of 1805	A Regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including the pargunas of Pattáspur, Kunnudichour, and Bagrae, at present included in the zila of Midnapur.	Section 7.
V of 1812	A Regulation for amending some of the rules at present in force for the collection of the Land-revenue.	Sections 2, 3, 4, 26 and 27.
XVIII of 1812	A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	Preamble and Sections 2 and 3.
VIII of 1819	A Regulation to declare the validity of certain tenures, and to define the relative rights of zamíndárs and patní taluqdárs; also to establish a process for the sale of such taluqs in satisfaction of the zamíndár's demand of rent, and to explain and modify other parts of the system established for the collection of rents generally throughout Bengal.	The whole Regulation.

SCHEDULE I—*contd.*

Number and year.	Subject of Regulation.	Extent of repeal.
I of 1820	A Regulation for providing that all sales of certain taluqs, made answerable by sale for arrears of the zamíndár's rent, shall be conducted in the mode prescribed by Regulation VIII, 1819, for the sales therein described.	The whole Regulation.
XI of 1825	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In Clause 1 of Section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
VIII of 1865	An Act to amend the law for the sale of such under-tenures as by the title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of arrears of rent due in respect thereof.	The whole Act.
IV of 1867	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
VIII of 1879	An Act to define and limit the powers of Settlement-officers.	The whole Act.

Bengal Tenancy Bill.

(*Schedule II.—Extract from Preamble to Regulation VIII of 1819.*)

SCHEDULE I—*concld.*

Acts of the Governor General in Council.

Number and year.	Subject of Act.	Extent of repeal.
XXV of 1850	An Act for the forfeiture to Government of deposits made on incomplete sales of land under Regulation VIII, 1819, and Act IV, 1846.	So much as is unrepealed.
XXXIII of 1850	An Act for amending the forms necessary for the sale of patní tenures in Bengal.	The whole Act.
VI of 1853	An Act relating to summary suits for arrears of rent, to sales of pátní taluqs and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent.	The whole Act.
X of 1859	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

SCHEDULE II.

(*See Section 3 (16).*)

Extract from Preamble to Regulation VIII of 1819.

"In the exercise of the privilege * * * conceded to zamíndárs under direct engagements with Government, there has been created a tenure which had its origin on the estates of the Rájá of Bardwán, but has since been extended to other zamíndárís; the character of which tenure is, that it is a taluq created by the zamíndár, to be held at a rent fixed in perpetuity, by the lessee and his heirs forever; the tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused from this obligation at the zamíndár's discretion; but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the zamíndár.

"By the terms also of the engagements interchanged, it is, amongst other stipulations, provided that, in case of an arrear occurring, the tenure may be brought to sale by the zamíndár, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand.

"These tenures have usually been denominated patní taluqs, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons who, on taking such leases, went by the name of darpatní taluqdárs: these, again, sometimes similarly underlet to be patnídárs; and the conditions of all the title-deeds vary in nothing material from the original engagements executed by the first holder."

Bengal Tenancy Bill.

(*Schedule III.—Forms of Receipt and Account.*)

SCHEDULE III.

FORMS OF RECEIPT AND ACCOUNT.

(*See Sections 70 and 71.*)

FORM OF RECEIPT.

1. Number
2. Year
3. Name of Village _____ Thánd _____
4. Tenant's name _____
5. Particulars of his holding (area, rent, &c.)—
   Nukdi Bighás _____ Rs. _____
   Bauli Bighás _____ Maunds _____ or Rs. _____
   Sayer: Bunkur Rs. _____; Julkur Rs. _____; Phulkur Rs. _____
   Government Cesses: Road Cess; Public Works Cess
6. Through whom paid _____
7. Date of payment _____
8. Amount paid (particulars on reverse) Rs. _____
9. Signature of Landlord or Authorized Agent

FORM OF RECEIPT.

1. Number
2. Year
3. Name of Village _____ Thánd _____
4. Tenant's name _____
5. Particulars of his holding (area, rent, &c.)—
   Nukdi Bighás _____ Rs. _____
   Bauli Bighás _____ Maunds _____ or Rs. _____
   Sayer: Bunkur Rs. _____; Julkur Rs. _____; Phulkur Rs. _____
   Government Cesses: Road Cess; Public Works Cess
6. Through whom paid _____
7. Date of payment _____
8. Amount paid (particulars on reverse) Rs. _____
9. Signature of Landlord or Authorized Agent

Section 69 of the Bengal Tenancy Act, 1884, provides as follows:—

"69. (*1*) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly."

Appropriation of payments.

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

Bengal Tenancy Bill.

(Schedule III.—Forms of Receipt and Account.)

Date of Payment.	Nukdi.		Baouli.	Sayer.		Cesses.	
	Current.	Arrear.	Current.	Current.	Arrear.	Current.	Arrear.

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighas	Rate	Rs. A. P.
Nukdi			
Government Cesses			

	Bighas	Maunds	Rs. A. P.
Baouli			
Julkur			
Bunkur			
Phulkur			

	Maunds	Rs. A. P.
4. Demand of the year		
5 Balance of former years (Bakaya)		

	Rs. A. P.
6. Total demand (current and arrear)	
7. Paid each on account of { Current demand ...	
{ Arrear demand ...	

	Maunds	Rs. A. P.
8. Paid in kind		

	Rs. A. P.
9. Balance outstanding at end of year	
10. Landlord's Signature	

Bengal Tenancy Bill.

(Schedule III.—Forms of Receipt and Account.)

Date of Payment.	Nukdi.		Baouli.	Sayer.		Cesses.	
	Current.	Arrear.	Current.	Current.	Arrear.	Current.	Arrear.

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighas	Rate	Rs. A. P.
Nukdi			
Government Cesses			

	Bighas	Maunds	Rs. A. P.
Baouli			
Julkur			
Bunkur			
Phulkur			

	Maunds	Rs. A. P.
4. Demand of the year		
5. Balance of former years (Bakaya)		

	Rs. A. P.
6. Total demand (current and arrear)	
7. Paid each on account of { Current demand ...	
{ Arrear demand ...	

	Maunds	Rs. A. P.
8. Paid in kind		

	Rs. A. P.
9. Balance outstanding at end of year	
10. Landlord's Signature	

Bengal Tenancy Bill.
(*Schedule IV.—Limitation.*)

SCHEDULE IV.

LIMITATION.

(*See Section 218.*)

PART I.—*Suits.*

Description of Suit.	Period of Limitation.	Time from which period begins to run.
1 To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year	The date of the breach.
2 For the recovery of an arrear of rent—		
(*a*) when the arrear fell due before a deposit was made on account of the rent of the same holding under section 73.	Six months	The date of the deposit.
(*b*) in other cases	Three years	The last day of the Bengali year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails.
3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat.	Two years	The date of dispossession.

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
4. From any decree or order under this Act to the Court of a District Judge or Special Judge.	Thirty days	The date of the decree or order appealed against.
5. From any order of a Collector under this Act to the Commissioner.	Thirty days	The date of the order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree, except where the judgment-debtor has by fraud or force prevented the execution of the decree.	Three years	(1) The date of the decree of order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.

Dissent.

I DISSENT from the report of the majority of the Select Committee on the Bengal Tenancy Bill.

The Committee commenced their sittings from the 21st November, 1883, and concluded their labours on the 13th March, 1884. They first met twice a week, and the members were required to give forty-eight hours' notice of amendments to be moved by them. From the 26th January the Committee resolved to sit thrice a week from 2 P. M. to 5-30 P.M.; and notices of amendments were required to be sent in to the Secretary the day before the meeting; and the amendments were circulated on the morning of the meeting. The new arrangement was proposed owing to the amount of work which remained undone, and also owing to the near approach of the Simla season; but I cannot refrain from remarking that, apart from personal inconvenience which it necessarily involved, it left the members scant time, scarcely ten hours, for the preparation of amendments, and six hours for their study, even if one gave his whole time to this work. I considered it my duty to protest against the arrangement, as it was neither fair to the individual members of the Committee, particularly to one in my position, being deprived of the opportunity of consulting those whose views I was understood to represent, nor to the momentous interests involved, but my protest was of no avail. The Committee certainly gave their best attention under the circumstances mentioned to the matters before them, and, as far as I was concerned, shewed me the utmost courtesy and consideration, but there was an unavoidable haste in disposing of momentous questions at the last moment, which could not but be regretted.

I wish the Rules of the Council had permitted the Committee to examine witnesses on practical questions connected with the Bill. The Committee, I doubt not, felt the necessity of this power. At the suggestion of His Honour the Lieutenant-Governor the Committee in an informal way examined some experienced zamíndárs on the subject of sub-letting.

The Bill has undergone material alterations at the hands of the Committee, but its cardinal principles remain unchanged. In some respects the position of the zamíndárs has been made worse than what it was in the original Bill. On some minor points even-handed justice has been done to both the zamíndár and the raiyat. The middle-man of course gains much more than what he has under the existing law, but the *boná-fide* cultivator, in whose behalf the greatest anxiety was evinced in the Committee, will, I fear, be practically worse off than he is at present. I do not now wish to discuss the whole Bill, and will not therefore enter into details on these points.

My objections to the Bill have been principally based on these grounds, firstly, because it goes against the ancient and existing land-law of the country, taking away on the one hand and conferring on the other rights which are inconsistent with that law; secondly, because it assumes a construction of the Regulations, which is opposed to judicial decisions, and takes for granted statements and facts not supported by evidence; thirdly, because it does not fulfil the primary object for which it was originally sought, namely, the simplification of the procedure for the settlement and realization of rent; fourthly, because it is calculated to sow dispute and dissension between the landlord and the tenant and flood the land with litigation to the detriment of the peace and welfare of the agricultural community; fifthly, because it will tend to reduce a large proportion of cultivating raiyats into agricultural day-labourers; and sixthly, because, by abolishing the freedom of contract between the landlord and the tenant, and by making the Court and the Revenue-officer the referee and arbiter in all matters of zamíndárí management and raiyatí action, it will neutralize the vital principle of self-reliance in the agricultural population and destroy its backbone, hamper the free operation of economic laws, and stereotype the patriarchal phase of Government with the aggravating evil of litigation at almost every step. These objections, which I took when the Bill was introduced last year,

have not, I am sorry to say, been removed by the alterations made by the Select Committee.

In specifying my objections to the Bill I do not propose to discuss it chapter by chapter or to traverse all its details. I propose to confine myself to the leading principles of the Bill and a few principal details.

Tenure-holders.

IN addition to the present class of persons who are recognised as tenure-holders, two other classes have been introduced, namely, (1) occupancy-raiyats who may sub-let more than half their holdings (section 37), and (2) raiyats, the area of whose holdings may exceed 100 standard bighás, the whole or part of which is sub-let; in this case the tenant will be presumed to be a tenure-holder unless the contrary is shown (section 5, sub-section 5). In the case of the first-mentioned person, who is called a converted tenure-holder, all the incidents of the status of a tenure-holder will hold good except his liability to enhancement of rent. A tenant of the last-mentioned class will be entitled to all the rights and privileges of a tenure-holder. With regard to the first, I cannot understand with what justice is an occupancy-raiyat exempted from his obligations under the Bill as to pre-emption and distraint, and the zamíndár in so far placed in a worse position, because the occupancy-raiyat chooses to sub-let more than half his holding. The conversion of an occupancy-raiyat of a holding, the area of which exceeds 100 bighás, into a tenure-holder, is, in my opinion, still more arbitrary. The status of a tenure-holder carries certain privileges, which the occupancy-raiyat does not possess, and for which, generally, a valuable consideration is paid to the zamíndár. For instance, a tenure is not, unfrequently, a permanent holding, heritable and transferable according to conditions of contract, and, under the present Bill, will enjoy favoured rates of rent and will be exempt from the rules of pre-emption and distraint. Surely, it cannot be contended that the conversion of the hundred-bighá jotedar into a tenure-holder under an edict of the legislature is consistent with the ancient or existing land-law of the country. In so far, it is a direct encroachment upon the rights of the proprietary class.

Then as to enhancement of rent of tenure-holders, section 8 of Regulation V of 1812 contained the following rule as to the rate at which auction-purchasers might collect:—"In the case of a dependant taluqdár, if the rent of the lands be computed according to the rates payable by raiyats or cultivators for land of a similar quality and description, a deduction shall be allowed from the gross rent in the adjustment of the jama of such dependant taluq at the rate of 10 per cent., for the taluqdár's profit or income, over and above a reasonable allowance for charges of collection according to the extent of the taluq." This section was repealed by Act X of 1859, which, however, contains no rule as to the grounds or limits of enhancement of the rent of tenure-holders and under-tenure-holders. But under case-law the rent may be enhanced up to the limit of the prevailing rate payable by the holders of similar tenures in the neighbourhood, or where no such prevailing rate is easily ascertainable, up to such a limit as shall not exceed 10 per centum of the collections after deducting the expenses of collection (*vide Field's Digest*). This case-law has been embodied in the present Bill, but with wide variations. For instance "customary rate" has been substituted for "prevailing rate", though the former is less easily ascertainable than the latter. Under the case-law the margin left to the tenure-holder as profit was not to *exceed* 10 per cent. of the collections, but under the Bill it is to be *not less than* 10 per cent. of the balance which may remain after deducting, not from the collections, which I take to be actual collections, but from the gross rents, not only the expenses but also "risks of collection". I may observe, I am not aware of any revenue-law under which an allowance is made for "risks of collection". Even the zamíndárs are not allowed any percentage for sums irrecoverable from raiyats on account of the Public Works and Road Cesses, though the liability is not their own, and though they collect the money for Government without any remuneration. It will be thus seen in what advantageous position is the tenure-holder placed under the present Bill compared with his position under the existing law. But this is not all. Under

the existing law the rent of a tenure-holder is liable to be enhanced to any reasonable amount, but under the Bill the enhanced rent is not to be more than double the previous rent; under the existing law the enhanced rent is to be paid at once, but under the Bill the Court may direct that the enhancement shall be gradual and payable in five years; under the existing law there is no limit of period as to enhancement of rent, but under the Bill the period is limited to ten years. I allude to the last three provisions to show that while so little consideration has been shown to the zamíndár, who is the proprietor of the land, and who is responsible for Government revenue under the stern sun-set law, so much tenderness has been shown to the tenure-holder who is generally looked upon as an idle factor. Surely this is not the way to discourage sub-letting.

Raiyats at fixed rates.

FOR the first time a legal presumption was introduced by Act X of 1859 to the effect that if the rent of a raiyat had not been changed for a period of twenty years before the commencement of a suit, it shall be presumed that the land has been held at that rent from the date of the Permanent Settlement. Whatever the necessity of such a provision at the time of passing Act X of 1859, that necessity, it cannot be denied, no longer exists. The raiyats have advanced in intelligence and independence, and the practice of granting printed rent-receipts has become common in many parts of the country. They do not, therefore, now stand in need of the same measure of protection against enhancement which was considered necessary in 1859. On the contrary, the effect of this provision has been disastrous to the zamíndár. The Hon'ble Mr. Reynolds drew attention to this point in his memorandum on the Bill of the Rent Commission. He quoted several opinions showing that the law has thrown "an unfair burden of proof upon the zamíndár", and that "it bears very hardly upon auction-purchasers who are often unable to get possession of the zamíndárí papers of their predecessors". This, Mr. Reynolds observes, is forcibly represented by the Collector of Purniyá, who believes that "there is hardly an estate in the whole of Bengal in which the value of the proprietary right has not suffered from this presumption". Without entirely abolishing the presumption Mr. Reynolds recommended that its operation should be confined to cases in which uniform payment could be proved for twenty years before the period when the presumption was first introduced into the law. He proposed a further concession in favour of auction-purchasers by providing that the presumption shall not be pleaded against them. In making these recommendations Mr. Reynolds remarked, "In determining the principle upon which the Legislature should act it would seem that the main point to be considered is the practical effect of the presumption which was introduced into the Act of 1859". Has this presumption generally operated to defeat an unjust claim on the part of the landlord, or to maintain the tenant in a status to which he was not rightfully entitled? It is believed that to this question there can be only one answer. In the great majority of the cases in which the presumption has been successfully pleaded, it has had the effect of conferring upon tenants, whose holdings really originated subsequently to 1793, a privilege which was intended to be confined to those who had held from the date of the Permanent Settlement. If this is really the case, it does not seem inequitable that the rule should be modified in the manner which has now been suggested.

Mr. Reynolds, I am sorry to say, has since changed his opinion, but the validity and justice of his opinion remain all the same. Relying upon it, I moved the amendment of the law to the effect originally proposed by Mr. Reynolds, but neither my motion nor a very much modified proposal to allow the twenty years to count from before the date of the passing of the present Bill was accepted by the majority of the Committee. The Bill thus describes the incidents of holding at fixed rates:

> Section 23.—A raiyat holding at a fixed rent or rate of rent—
>
> (*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as a tenure-holder, and

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of contract between him and his landlord, liable to be ejected.

Coupling this provision with the twenty years' presumption referred to I cannot resist the conviction that it will tempt raiyats, whether entitled to the presumption or not, to declare themselves to be raiyats at fixed rates, and thus defraud the zamíndár of his just rights, who, if he be strong enough to assert them, must go through an expensive and harassing process of litigation to do so.

The intention of the Legislature in introducing this law of presumption was to protect raiyats holding from the date of the Permanent Settlement from arbitrary enhancement of rent by unscrupulous zamíndárs, but the continuance of this provision will, I fear, have the effect of converting by a side-wind every occupancy-raiyat into a *mukarraridár* or permanent tenure-holder. The consequence of this provision to good and bad zamíndárs is also striking. Where a zamíndár from a dislike of litigation, forbearance, or sympathy, has not enhanced the rent of a raiyat for more than twenty years, the raiyat, who has been careful enough to preserve his rent-receipts, will easily prove his case, while a zamíndár, who has shewn no such consideration or leniency, who has not scrupled to trouble and harass the raiyat with periodic enhancement, will necessarily have a decided advantage. The result will be that the good zamíndár will suffer and the bad zamíndár will gain.

Occupancy-raiyats.

THE occupancy-raiyat of the modern time is notoriously a creature of Act X of 1859, but I do not wish to revive the controversy on the subject. The twelve years' rule has been in existence for more than a quarter of a century, and it cannot be fair or just to disturb it now. The only fault found with the present law on the subject is that if a zamíndár were so disposed he could defeat the growth of the occupancy-right by shifting the raiyat from field to field. This practice, it is admitted, is not known in Bengal. But the Secretary of State, whilst strongly expressing himself in favour of the present twelve years' rule of continuous possession, has recommended the following modification. He would provide that "every resident raiyat shall have a right of occupancy in the land which he occupies and pays rent for, and that a resident-raiyat shall be one who, or whose ancestor, has occupied any land in the village or estate for twelve years." I do not at all subscribe to the equitableness of this provision. I do not think that it is fair or just that a squatter, because allowed to hold land in one part of an estate for twelve years, should, *ipso facto*, be entitled to hold land in all other parts of the estate as an occupancy or privileged raiyat. If in any part of the country the zamíndár has sought to nullify the growth of occupancy-right by shifting the raiyat from one plot of land to another, he has, it cannot be denied, acted within the law, and it would be as unreasonable to suppose that he has acted wrongly as to suppose that a tradesman is wrong in suing his debtor before the time, which would, under the law of limitation, bar his claim. As for preventing shifting, if it should be deemed absolutely necessary, I would have preferred to punish such an act by imposing a heavy penalty. But the Committee ruled, that the Right Hon'ble the Secretary of State for India having finally decided the question, they were not competent to re-open it, but I cannot help remarking that the Committee have gone further than the area covered by the Secretary of State's decision. The original Bill contained the following provisions regarding the acquisition of the status of a settled raiyat:—

Section 45.—Every person who, for a period of twelve years, whether before or after the commencement of this Act, has continuously held, as a raiyat, raiyatí land situate in any village or estate, shall, notwithstanding any contract to the contrary, and though the land so held by him at different times during that period may have been different, be deemed to become, on the expiration of that period, a settled raiyat of that village or estate.

Again:

Section 47.—Every settled raiyat of a village or estate holding after the second day of March, 1883, as a raiyat, any raiyatí land comprised in that village or estate shall, notwithstanding any contract to the contrary, be deemed to acquire or have acquired in that land a right of occupancy under the law for the time being in force.

At the instance of the Bengal Government the Committee have greatly extended the theory of the settled raiyat and created a new legal presumtion in his favour. Thus:

Section 25.—(1) Every settled raiyat of a village or estate shall have a right of occupancy in all land held by him as a raiyat in that village or estate;

(2) Every person who, being a settled raiyat of a village or estate, held land as a raiyat in that village or estate at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force.

Section 26.—(1) Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village or estate, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village or estate;

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

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

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

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

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

(7) If a raiyat recovers possession of land under section 96, he shall be deemed to have continued to be a settled raiyat, notwithstanding his having been out of possession for more than a year.

These provisions, I submit, are wholly outside the decision of the Secretary of State. That authority would in no case reduce the period of occupation from twelve years as provided in section 25, sub-section (2), nor did he recommend any legal presumption that every raiyat shall be considered a settled raiyat with right of occupancy unless proved to the contrary. The Secretary of State, it would be observed, would recognise a "resident raiyat" as an occupancy-raiyat, but the provisions quoted above do not recognise *residence* as a condition of accrual of occupancy-right. In the second place, the Secretary of State does not refer to possession by two or more co-sharers as a proof of occupancy-right derived by each such co-sharer. In the third place, he does not say that, even if a settled raiyat leaves his holding and pays no rent, he shall be considered a settled raiyat "for one year thereafter". On the contrary, he declares payment of rent as an inalienable condition of the right. And lastly, the Secretary of State no where says that if a raiyat once abandons a holding and afterwards recovers possession by payment of compensation, he shall be deemed to have continued to be a settled raiyat notwithstanding his being out of possession for more than a year. All these proposals, I repeat, are outside the sanction of the Secretary of State, and, as a matter of course, are so many encroachments upon the proprietary rights of the zamíndár.

It is observable that while a person holding land as a raiyat shall not be prevented from acquiring an occupancy-right in the land by reason that he is jointly interested in the land as proprietor or tenure-holder, and a person, though an *ijárdár* or farmer, shall not lose his right of occupancy in any land which he may subsequently hold in farm, it is declared that if the landlord acquires an occupancy-holding, the occupancy-right shall cease to exist (section 28). On what principle is this right denied to the landlord and conceded to the tenure-holder, who may be a permanent holder, and to the farmer, is not clear to me. It does seem strange and incomprehensible that the zamíndár alone shall not be allowed to enjoy the ordinary rights of a purchaser, simply because he happens to be a zamíndár.

On this point I venture to draw attention to the following remarks of Mr. H. L. Dampier, Senior Member of the Board of Revenue, deservedly regarded as a high fiscal authority in Bengal. He says: "It will be open to the whole world, with one exception only, to acquire by purchase or otherwise and to continue to hold certain rights described as occupancy-rights in a given piece of land. Such rights may be acquired and held by distant non-agricultural capitalists; by the zamíndárs of estates adjoining that within which the land lies; by the zamíndárs, resident or absentee, of the estate itself, if the land is included in a tenure; by any non-resident-holders of tenures, whether in the estate itself or in any other estate; by the very holders of tenures above the lowest under-tenure which includes the land. The one person who is debarred from holding this right, even if he acquires it by purchase from the person in whom it last vested, is 'the landlord', that is, by the definition the 'person or number of persons immediately under whom a tenant holds'; or, according to the proposal made by the Lieutenant-Governor towards the end of paragraph 14, the 'proprietor or permanent tenure-holder immediately under whom the raiyat holds'". The justice of these remarks is so evident that I need say nothing by way of comment.

Transfer of occupancy-holding and pre-emption.

THE question of transferability of the occupancy-holding has been discussed threadbare. I will not therefore repeat the arguments against it, which are already so well known. Suffice it to say that the measure will be equally injurious both to the zamíndárs and the raiyats; the former will have a valuable right unjustly taken away from them and be exposed to the intrusion of hostile persons into their estates, and the latter, under their peculiar circumstances, will, at no distant time, be reduced to the status of day-labourers by being sold out of their holdings, on which they depend for their subsistence. Neither under the Permanent Settlement Regulations nor under Act X of 1859 is an occupancy-holding transferable. When the question of the transferability of the occupancy-holding was first proposed by the Government of Bengal, the Government of India expressed its disapproval of it. The British Indian Association was invited to express its opinion on the subject, and it agreed to the legalization of the sale of the occupancy-holding in satisfaction of decree for rent, and suggested that, where a zamíndár might adopt this remedy, an occupancy-holding once so sold should be declared to have become a transferable tenure. The Lieutenant-Governor of the day practically adopted the suggestion. In a letter to the Government of India, dated the 2nd February, 1878, Mr. Secretary Reynolds wrote:

"The Lieutenant-Governor has with some reluctance withdrawn the proposal that the occupancy-right shall be generally transferable by private sale or other agreement. The weight of opinion is in favour of this proposal, as will be seen by a reference to the letter of the Board of Revenue, and His Honour is satisfied that such transfers would not have the bad effect which has been sometimes apprehended, and that they would not tend to transfer the land to classes whose ownership it might not be thought desirable to encourage. He believes that such a right of transfer would be much to the benefit of landholder and raiyat. It appears, however, that the landlord class are strongly opposed to the concession of any general right of transfer, and the Governor General in Council has expressed serious doubts as to the expediency of including such a

provision in the Bill. The Bill, therefore, only proposes to recognize sales of occupancy-tenures at the request of the landlord in execution of decrees of Court, and to this the Lieutenant-Governor believes that no objection will be made."

The Bengal Government has since changed its opinion on the subject, and the concession made by the zamíndárs in 1878 necessarily goes for nothing. In the present Bill the transferability of the occupancy-holding is made general and absolute, subject to a rule of pre-emption. There is nothing in the Bill to prevent greedy land-jobbers or speculators from trafficking in land at the expense of the zamíndárs. As to right of pre-emption accorded to the zamíndár it will, I am afraid, prove in practice more a shadow than a substance. In the first place, the zamíndár will have to pay a consideration for land of which he is the proprietor, and which was never before transferable under the law. He will then have to run a competition with other bidders for the purchase of the land, and, if he cannot come to an agreement with the raiyat about the price, he must go through the expensive process of a reference to the Court for arbitrement, and must be prepared to pay the price adjudged by the Court. If the raiyats of a zamíndár in any considerable number become recusant and threaten him with the sale of their holdings, it will be difficult for him to keep out hostile people from the holdings unless he has a long purse to buy them up. Practically, therefore, this recognition of the transferability of the occupancy-holding may be worked by evil-disposed raiyats to the utter ruin of the zamíndár. It is noteworthy that while the zamíndár will have to go through the expensive process of obtaining the Court's decision as to price, the raiyat shall not be bound by that decision, for section 32, sub-section 4, says that when the zamíndár tenders a price to the raiyat, "the raiyat shall either abstain from selling the land or sell it to the landlord at that price". So the landlord will be entirely at the mercy of the raiyat.

Shadowy as the right of pre-emption will practically be, the amended Bill contrives to keep out of the purview of this provision all substantial raiyats, for under it the rule of pre-emption will not apply to tenure-holders, and all occupancy-raiyats who may sub-let more than half their holdings, or who may keep holdings of more than hundred bíghás in size part of which is sub-let, are, *ipso facto*, coverted into tenure-holders.

Enhancement of rent.

I HAVE already alluded to the question of the enhancement of the rent of tenure-holders, who are placed at a considerable advantage to the detriment of the zamíndár, a position which they had never before enjoyed under the Permanent Settlement Regulations or under Act X of 1859. With regard to the enhancement of the rent of occupancy-raiyats I wish to point out that at present the enhancement law has come to a dead-lock, and that one of the chief objects of fresh legislation is admitted to be to afford relief to the zamíndárs in this matter; but I am of opinion that the alterations made by the Committee will tend more to maintain the *status quo* than to secure justice to the landlord. In the first place under the existing law there is a perfect freedom of contract between the landlord and the tenant regarding enhancement of rent outside the Court, but under the Bill this freedom is entirely taken away, and it is provided that where the arrangement may be voluntary, the enhancement shall not exceed more than four annas in the rupee, that is to say, not more than two annas for a term of at least seven years, and if more than two annas, but not more than four annas in the rupee, for a term of at least fifteen years. Thus a serious disability is imposed upon the landlord in fixing rent outside the Court. When enhancement of rent is sought by suit, the grounds on which the enhancement may be applied for are thus set forth:

(*a*) That the rate of rent paid by the raiyat is below the prevailing rate payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity.

(*b*) That there has been a rise in the average prices of staple food crops in the locality or at the usual markets.

(*c*) That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(*d*) That the productive powers of the land held by the raiyat have been increased by fluvial action.

I am not prepared to say that the revised grounds will materially help the solution of the problem of enhancement. The first ground, "prevailing rate" is not made clear, and the same doubts and uncertainties that now hang round it remain unremoved. An attempt was made to explain it, but it was opposed by the Bengal Government. The second ground will, I am afraid, prove fictitious, for knowing as the Committee do, how unreliable are the price-lists prepared by Government officers, they cannot deny that it will be difficult to obtain reliable data for striking average prices, particularly, "in the locality or at the usual markets"—who is to fix the usual markets? The third ground will be made practically inoperative by the conditions which follow. As for the fourth ground, even if it be fairly worked, its application will be exceptional.

The rules providing for enhancement enquiries by the Revenue-officer will practically leave the whole matter to the discretion of the Revenue-officer. For instance, in ascertaining the prevailing rate, the Revenue-officer is directed to make a local enquiry, but he is not told on what principle he is to find the prevailing rate, and the result will be diversity of practice under diverse officers. In working out enhancement on the ground of rise in prices it is provided that—

(*a*) The Court shall have regard to the lists of prices periodically published under the authority of the Local Government, and shall compare the average prices during the quinquennial period immediately preceding the institution of the suit with the average prices during such other quinquennial period as it may appear equitable and practicable to take for comparison.

(*b*) The Court shall not enhance the rent so that the enhanced rent exceeds the previous rent by more than four annas in the rupee.

(*c*) Subject as aforesaid, and subject also to section 48, the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last quinquennial period bear to the average prices during the previous quinquennial period taken for purposes of comparison.

In carrying out the above provisions much will depend upon the price-lists, and, as I have already stated, those that are published in the *Calcutta Gazette* by Government are wholly unreliable. They are collected by the police, who cannot be expected to be over-scrutinous. They are not tested by any responsible agency, not to say that the wholesale and retail prices being generally mixed up, no fair average can be based upon them. Unless special care be taken to prepare the lists—and this remark applies to future lists—they cannot and ought not to be accepted by courts of justice as good and valid evidence. The question still recurs—how will the lists of past prices be prepared?

It will be observed that the value of all crops must be reduced to the price of paddy in Bengal, and that of Indian corn, barley and wheat in Bihár. The specification of the staple food-crops is left to the discretion of the Local Government, which may from time to time vary them. No allowance is made for valuable crops, such as tobacco, sugarcane, mulberry, potato, jute, &c. This rule is evidently founded on the principle of the Tithes Commutation Act of the United Kingdom. There is, however, I venture to submit, no fair analogy between tithes in England and rents in Bengal; for the former represented a fixed share or a tenth part of the crop, while the latter, though originally based on a share of the produce, have now greatly receded from the old standard. An English tithe is not susceptible of enhancement, whereas the Bengal money-rent is legally declared to be liable to enhancement. The question, therefore, arises whether the principle, which is held equitable in the commutation of tithes, would be fair and equitable in the enhancement of a money-rent? As far as I can judge, the difficulties in carrying out the principle will by no means be less than what they are under the existing law. As for enhancement on the ground of landlord's improvement, it is so much handicapped by restrictive conditions, that it will, I fear, prove an economic anomaly. After enumerating the circumstances which the Court should take into consideration in ordering enhancement on this ground, section 46 says that the Court shall

consider the ability of the land to bear a higher rent. With such an uncertainty hanging over him, will any proprietor with two grains of common sense to rub against one another undertake any improvement?—if he cannot be sure of any return for his money, naturally, he wont lay out money. There are two other points connected with this subject. It was settled in previous correspondence between the Government of Bengal and the British Indian Association that enhancement of rent in any case should not be more than double the present rent, and that every enhancement of rent shall have a currency of ten years. These rules were embodied in the original draft Bill, but, at the instance of the present Bengal Government, both the rules have been altered. It is now declared that, when enhancement is sought on the ground of prevailing rate, the rent shall not exceed the previous rent by more than eight annas in the rupee or fifty per cent., and that, when it is sought on the ground of rise in prices, the enhanced rent shall not exceed the previous rentby more than four annas in the rupee or twenty-five per cent., and that every enhancement shall have a currency of fifteen years. It would be thus seen that there is no finality in the decision of Government, and that the more is conceded by the zamíndárs the more is demanded from them.

It is observable that where the enhancement is sought on the ground of the present rent being below the "prevailling rate", common sense suggests that the rent should be raised to the limit of the "prevailing rate"—it is not clear why a maximum limit of fifty per cent. should be fixed in such a case. Again, where the enhancement is sought on the ground of rise in prices, and the increase is to be given according to the rule of proportion, it is not equitable that there should be again a maximum limit of twenty-five per cent.

Commutation of produce-rents into money-payments.

THIS part of the Bill affects Bihár more than Bengal, and as my honourable collegaue, His Highness the Maháráját of Darbhangá, will doubtless comment upon it, I need not say much upon it. I may, however, observe that the principle upon which the commutation is directed to be made, namely, (*a*) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity, and (*b*) the average value of the rent actually received by the landlord during the preceding ten years, will tend to lower the present rents. I should add, that when the Bill was introduced, a distinct assurance was given that the present rents will not be lowered.

Non-occupancy-raiyats.

BOTH under the Permanent Settlement Regulations and Act X of 1859 it was left entirely to the discretion of the landlord to deal with the non-occupancy-raiyat, who is none other than the tenant-at will. But the relations between the landlord and non-occupancy-raiyat are materially altered by this Bill. Nothing will prevent the non-occupancy-raiyat from acquiring the occupancy-right, and, as already observed, he will get the benefit of the legal presumption of a settled raiyat, if he can manage to scatter a few seeds once upon a plot of ground; then when he will be first let in he will be liable to pay such rent as may be agreed on between himself and his landlord, but no enhancement will be allowed except by registered agreement, and even when an agreement may be tendered by the landlord to the raiyat, the latter may refuse it, and the former will then be driven to the necessity of instituting a suit to eject him. The Court shall then determine what rent is fair and equitable for the holding, and if the raiyat agrees to pay the rent so determined, the landlord, under order of Court, shall be bound to give him a lease for five years, and if before the termination of the lease the raiyat shall have acquired a right of occupancy, he will be entitled to all the rights and privileges of an occupancy-raiyat. The non-occupancy-raiyat will thus be one in name; the landlords present right to deal with him at his discretion is entirely taken away, while the freedom of contract is disallowed and the landlord is compelled to give a judicial lease for five years. I should observe that in consequence of the introduction of the judicial lease,

the original provisions regarding compensation for disturbance have been omitted. These provisions embodied a new-fangled idea not known in this country, and would, if retained, have proved a new apple of discord. But the substitution of the judicial lease for five years involves a great injustice to the landlord, who is tied hand and foot by the Court in a matter in which he has always enjoyed perfect independence of action. The raiyat, in whose favour the judicial lease is ordered, may be most obstreperous and tribulent, may by his bad advice be tainting the whole flock around him, and may thus prove most mischievous, not to say that the landlord, if he settles the land with another raiyat, may get better rent and perhaps better security for payment of rent. But the judicial lease will give him no such option or advantage. I cannot help thinking that the provisions relating to non-occupancy-raiyats involved a further invasion of the proprietary rights of the landlord, and that in favor of a class of tenants who are not attached to the soil, and have, therefore, no manner of moral claim upon the consideration of the landlord.

Sub-letting and sub-raiyats.

ONE principal defect of the Bill, as introduced, was that, while it seriously curtailed the rights and privileges of the zamíndár, it did practically little for the good of the *boná-fide* cultivator, whose labour constituted the wealth of the country and fed a whole host of proprietors and sub-proprietors including the Government, as the representative of the public. The position of the middleman had been greatly strengthened, while the sub-raiyats, usually the actual cultivators of the soil, were left to the tender mercies of the middlemen. The invidiousness of this condition was fully realized by the Committee, and they proposed various devices for bettering the position of the sub-raiyats. Accordingly, restrictions have been proposed in the Bill on sub-letting, but I doubt whether these provisions will work. In the first place, if an occupancy-raiyat sub-lets more than half his holding, he shall on registration of the same be converted into a tenure-holder. Considering the decidedly advantageous position of the tenure-holder, this will operate as a premium on sub-letting instead of as a repressive measure. In the second place, if an occupancy-raiyat sub-lets, his sub-lease shall not be valid for a term exceeding seven years, and this provision will have a retrospective effect. Surely this will be no loss to the sub-lessor, for the shorter the lease, the greater his gain. In the third place, the landlord of a sub-raiyat shall not, in the case of a registered lease, be entitled to recover rent more than fifty per cent. of what he himself pays, and in any other case not more than twenty-five per cent. I do not understand how this rule will work, where there is a long chain of middlemen, for instance in Backergunge, where there are thirteen grades of middlemen. Will each middleman have the right to claim from his sub-raiyat fifty per cent. in excess of what he pays to his own landlord? What would then be the position of the last link in the chain —of the men who immediately cultivates? And in the fourth place, a sub-raiyat shall not be liable to be ejected by the landlord except at the end of an agricultural year and after a written notice to quit, to be served not less than six months before the expiration of that year. My own impression is that there will be frequent disputes between the superior raiyat and the sub-raiyat as to whether the former has sub-let more than half his holding, and the result will be either silent suffering on the part of the sub-raiyat or frequent litigation. Then, as far as I can judge, the limitation of rent under section 62 will apply only in such cases in which a superior raiyat may sub-let more than half his holding; he will, therefore, studiously keep himself under this limit and thus avoid the clutches of the law. Furthermore, it will be nobody's interest to bring to Court the superior raiyat contravening the law, for no penalty attaches to breach of law. The superior raiyat will make it a point not to let his land to any raiyat who will not accept his own terms, and when a sub-raiyat accepts those terms, he will not seek the benefit of the law; another raiyat, a third party, may wish to get the land on the terms prescribed by law, but he will have no *locus standi*, if he be not admitted by the superior raiyat. So that the new provisions restricting sub-letting will either prove a dead-letter or give rise to endless litigation.

Improvements.

THE chapter on improvements introduces an alteration in the relations between the landlord and tenant consistent with neither the existing law nor custom. At present improvements are generally made by the landlords, and where they are made by tenants, they are effected with the consent and sanction of the landlord, but this chapter declares that (1) where a raiyat holds at a fixed rent his landlord shall not be entitled to prevent him from making any improvement in respect of his holding, (2) where a raiyat has an occupancy-right he shall have the prior right to make the improvement unless it affects another holding or other holdings under the same landlord, and (3) where a non-occupancy-raiyat desires that a certain improvement should be made in his holding, he shall serve a notice on the landlord calling upon him to make the improvement within a reasonable time, and if the landlord is unable or neglects to comply with his request, he may make the improvement himself. The whole theory of these provisions ignore the proprietary right of the landlord, and assigns to the Collector the task of deciding as to who has the right to make improvements. If public policy requires that the raiyat should be encouraged to make improvements, surely the first option ought to be given to the landlord to effect them. From an economic point of view, the landlord, having larger capital, is in a better position to carry out improvements, but no facilities are offered to him for this purpose. Even a return in the shape of increased rent is not assured to him for his outlay of capital on improvements, for it will be in the discretion of the Court not to allow an enhancement, if the court thinks that the land cannot bear enhanced rent. The inevitable result of these rules, I am afraid, will be to throw back all improvements. The soundness of the policy, which expects improvements from those who have not the means to make them, and to deter those who can, is unintelligible to me. I suggested that facilities should be given to the landlord to acquire land for purposes of agricultural experiments, model-farms, &c., but my proposals were not accepted. I was referred to an amendment of the Land Acquisition Act.

Management of joint estates.

THE Bill gives power to the District Judge, on the application of the Collector or of any person interested, even to compel to deprive co-owners of an estate or tenure of the right of management thereof, if it appears to him that there has ensued or is likely to ensue (*a*) inconvenience to the public, or (*b*) injury to private rights. I shall take the last point first. I at once admit that hardships and harassment may be caused to raiyats in consequence of disputes among co-owners and the absence of a common manager, but this point has been met by the Committee in the provisions made for deposit of rent. Section 73, clause (*c*), says that a tenant may deposit rent when the rent is payable to sharers jointly, and the tenant is unable to obtain the joint receipt of these co-sharers for the money, when no person has been empowered to receive rent in their behalf. Besides, the co-sharers cannot apply for distraint or sue for enhanced rent unless they make the application or institute the suit jointly or through a common manager. It will be thus seen that the Bill effectually removes all reasonable complaints of raiyats who are tenants of joint estates. As for inconvenience to the public from the joint management of estates, I confess, I do not clearly understand it. If, for instance, the co-parceners default in the payment of revenue, their estates are liable to sale; if they transgress law or fail to comply with public requisitions, their responsibility is easily traceable under the operation of the Bengal Registration Act, and they are liable to punishment. It is not therefore clear why they should be deprived of the management of their own property because the Collector or Judge thinks that it causes "inconvenience to the public". I submit it would be contrary to sound public policy to remove all incentives to exertion and improvement from landed proprietors and capitalists by delegating the management of their property to others on pleas which have no existence in fact.

Record-of-rights, settlement of rents, tables of rates and record of proprietor's private lands.

THE chapters relating to these subjects are doubtless in accordance with the modern ideas of land administration in periodically settled India, but as far

as Bengal is concerned, the rights and interest of different parties are generally well defined, and where there might be disputes between landlords and tenants in matters dealt with in these chapters, common sense would suggest that the application of the law should be left to the self-interest of the parties concerned. But the essence of these chapters is that while liberty is accorded to both landlord and tenant to move the machinery provided in them, the Local Government is empowered to bring of its own motion the machinery into action. The application of the provisions contained in these chapters will, I fear, plunge the country into a flood of litigation, stir up the worst passions of both the landlord and the tenant, open a wide door to perjury and forgery, give rise to endless corruption among the subordinate *amlah*, and throw the agricultural population into a sea of trouble, expense and loss. This was the lesson taught by the Revenue Survey. Of course, when the parties will themselves apply for the enforcement of the provisions under notice, it will be their own lookout, but I do not see any good or valid reason why the Government should, without any application from the parties, step in and inflict upon the country the evils pointed out above. The work contemplated cannot, I fear, be accomplished in two or three generations to come, and for all this time will run the festering sore indicated above. If the record-of-rights were confined to those cases in which auction-purchasers at revenue or summary sales may not receive *jamabandí* papers for their guidance, if the settlement of rents were made applicable to those cases in which the raiyats might combine and withhold payment of rent and agrarian outrages might take place, and if the record of proprietor's private lands were limited to those cases in which the proprietor himself made the application, in all these cases, on the application of parties, it would be reasonable and fair; but to give the wide scope which has been given in these chapters by vesting the Government with unlimited discretion is not only not warranted by the necessities of the case, but will be followed by evils which will be highly detrimental to the best interests, peace and happiness of the agricultural population. As regards tables of rates, the enquiries which have been made on the subject have made it clear that in most parts of the country they are not practicable, that there are so many variations in rates of rent, sometimes one hundred and odd in a village, owing to various causes, historical, personal, economical and social, that it is hopeless to discover any typical or uniform rate, or what was formerly called *Pargana* rate in any given area. And yet power is taken by the Local Government to order preparation of tables of rates for special areas and to charge landlords and tenants with the cost of this work, though they may not in the least benefit by it. In the same way the expenses which may be incurred by enforcing the provisions relating to record-of-rights and settlement of rents, will be cast upon the landlords and tenants, though no application had been made by them. Thus a new cess will be imposed upon the land for purposes of proceedings which may do more harm than good to the landed classes.

As regards the record of proprietor's private lands which go by the name of *khámár*, the definition given is wholly opposed to what is contained in the Permanent Settlement Regulations and excludes all waste lands. Section 138 declares:

Section 138.—(1) The Revenue-officer shall record as a proprietor's private land—

(*a*) land which is proved to have been cultivated as khámár, zírat, sír, nij, nij-jot, or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village custom as proprietor's khámár, zírat, sír, nij, nij-jot, or kamat.

(2) In determining whether any other land ought to be recorded as a proprietor's private land the officer shall have regard to local custom and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

Section 37 of Regulation VIII of 1793 thus describes *khámár* lands:—

Section 37, Regulation VIII of 1793. The above exception [exclusion of lakhiraj lands from the general assessment], however, is not meant to include the *Malikanah* lands in Bihár, or the *nankar, khámár, nij-jot,* and other private lands of the zamíndárs and independent talukdárs, or other actual proprietors of land in Bengal and Mednípur, &c.

It will be seen by comparing the language of the Regulation with that of the Bill that no such condition as cultivation for twelve continuous years was attached to the zamíndár's *khámár* lands under the old law. As for waste lands, it is notorious that they were given to the zamíndár to enable him to recoup the loss which inevitably fell upon him under the crushing assessment of the Permanent Settlement.

Distraint.

THE law of distraint is generally regarded as an important and potential auxiliary in realising rent. In Bihár, I understand, it is largely resorted to. The essence of the present law of distraint is, that the process is a sharp and quick remedy, and that the whole responsibility rests upon the landlord who is liable to heavy penalties in case of abuse of power. Under the Bill distraint is made a process of Court; it is clogged with various restrictions, and by the time the order may be executed the crops may be off the field. The procedure is so much elaborated that it will no longer prove the prompt remedy, which the distraint law ought to be, while the expense and harassment will be such as to compel the landlord to forego it altogether. I am inclined to think that the law of distraint, as provided in the Bill, will remain a dead-letter, and thus the only facility which the landlord possesses at present for realising his rent, quickly, will be taken away from him.

Judicial Procedure.

I NEED not repeat that the Government has over and over promised to simplify the procedure for recovery of rent. It has recognised its obligation in this respect from the time of the Permanent Settlement to this day. One of the primary objects of the present Bill from its first inception has avowedly been the simplification of the procedure for the realisation of rent, and the Committee in deliberating upon the subject fully admitted it, but the practical result of their deliberations, I am constrained to say, is disappointing. I submitted three schemes on the subject: (1) the Patní Procedure, (2) the Certificate Procedure now applicable to Government and Wards Estates, and (3) a modification of the present procedure. I set out below the details of the third scheme.

The zamíndár or rent-receiver in instituting a suit for arrear of rent should make out a *primá facie* case by filing necessary papers such as *jama-wásil-bákí* papers and counterfoils of receipts and giving necessary evidence.

The Court should then issue summons. In order to obviate the usual complaint of non-service of summons, I would suggest a provision to the following effect:—

"The summons shall be ordinarily served personally or by a registered postal cover. If for any reason the summons cannot be served personally on the defendant, it shall be affixed at his usual place of residence in the village in which the land is situate, or within five miles thereof. The notice may be served by affixing it at the mál-kacharí of such land, or on the land for which the arrear is due or other conspicuous place thereon, or at the village chauki or chowpal, or at some other conspicuous place in the village in which the land is situate. An attestation of service should be taken from the village chaukídár, village mandal, or some two respectable residents of the village, or rural sub-registrar, as the case may be."

The order to prevent abuse, at least two of the abovementioned processes should be observed in every case; and with this safeguard the plea of non-service of summons should not be accepted by the Court as a good ground for re-opening or retrying a case which has been decided *ex parte*.

The summons should contain a notice that unless the defendant appears within one week from date of service, the Court shall pass a decree for the amount claimed and order immediate execution. The Court should be required to examine the defendant within eight days from the date he enters appearance and give notice of the day appointed to the plaintiff. The defendant should be required to file all documentary proofs and bring his witnesses in support of his pleas on the day of his examination. If the nature of the case admits of the immediate disposal of the suit, the Court should do so: or if the case be contested, it should on that day settle the issues in the presence of both parties and fix another day for hearing and final determination of the suit, not exceeding a fortnight from the date of examination of the defendant.

As regards execution, if the defaulter be a tenure-holder or occupancy-raiyat, his tenure or holding should be sold in execution. If he be a non-occupancy-raiyat, he should be evicted.

No appeal should be admitted unless the amount decreed was deposited. The rent-receiver should be allowed to take out the deposit on giving proper security.

This scheme seemed to enlist the sympathy of many of my honourable colleagues in the Committee, but, to my misfortune, the majority have not been able to accept it. They say—

> For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent-suits, we are unable to suggest anything of importance in this direction which would not involve a serious risk of failure of justice. In particular, while we are anxious to facilitate the service of summons and the proof of such service, we are unwilling to give any presumption of law against an absent defendant except on adequate proof of such service.

The Committee have, however, introduced the following new provisions :—

> We have, however, with a view to avoiding, as far as possible, the complication and delay which arise from questions as to the landlord's title being raised in rent-suits, made an important amendment in the section (164) which requires a tenant admitting that rent is due from him, but pleading that it is due not to the plaintiff but to a third person, to pay the amount into Court. Our object is to force the issue of disputed title to be raised separately and independently of the rent-suit, and we have therefore provided that the Court shall, on the money being paid in, cause notice of the payment to be served on the third person, and unless he, within three months, institutes a separate suit against the plaintiff and obtains an order restraining the payment of the money, it will be paid out to the plaintiff on his application.

A much more efficacious remedy, in my humble opinion, would have been, as I pointed out in Committee, to declare forfeiture of right of the raiyat in case his disclaimer of the title of his landlord was disproved in Court. The modifications proposed by the Committee would only multiply wheel within wheel, a title-suit in an arrear-suit, and thus vastly delay the realization of rent instead of facilitating it.

The Committee propose to give power to the High Court to make modifications in the ordinary procedure, if necessary, in applying it to the trial of rent-suits. This, to my mind, is tantamount to shirking the question. Surely the legislature, which has enacted the code of procedure, is competent to modify it for the purpose of expediting the trial of rent-suits.

I do hope that when the Committee meet in November next, they will be able to see their way to an efficacious simplification of the present procedure for the realisation of rent, which is a crying grievance with the landlords, and in consequence of which they are not unfrequently heavy losers in meeting the Government demand of the revenue and the cesses. If there is a consensus of opinion on any one point connected with the rent-law, it is on this, and it would be a scandal if, while the whole law is being overhauled, no substantial aid be given to the landlords to realize their just dues.

Freedom of contract.

UNDER this Bill, freedom of contract between the landlord and the tenant is practically abolished. The matters which are placed beyond the reach of contract are thus specified by the Committee :—

(*a*) The acquisition of the status of settled raiyat and of the occupancy-right (sections 24, 25 and 26).

(*b*) The incidents of the occupancy-right specified in section 31.
(*c*) The occupancy-raiyat's right to demand a reduction of rent under section 51.
(*d*) The right of either landlord or tenant to demand a commutation of a produce-rent under section 53.
(*e*) The protection afforded by the Bill to a non-occupancy-raiyat or an under-raiyat from ejectment except on specified grounds (sections 58, 59, 60 and 63).
(*f*) The right of a tenant to a reduction of rent on account of a diminution of the area of his holding (section 66).
(*g*) The right of a raiyat to make improvements and claim compensation for them (sections 88, 89, 90 and 93).
(*h*) The protection afforded to all tenants against ejectment except in execution of a decree (section 98).

I have, in my remarks on the introduction of the Bill, strongly protested against this retrograde move. The Permanent Settlement Regulations not only recognized but openly encouraged freedom of contract, and Act X of 1859 did the same. I cannot conceive that if the raiyat can be fairly considered a free agent in mortgaging or selling his hearth and home or his agricultural land, in disposing of the produce of his field, or engaging his labour and fulfilling a thousand other obligations of every-day life, why he should be considered incompetent to enter into contract with his landlord. I would strongly urge the re-consideration of this question.

Civil Courts and Revenue-officers.

THE jurisdiction under the Bill is divided between the Civil Court and the Revenue-officer. The large powers which have been conferred upon the Revenue-officer at the instance of the Bengal Government are, I hope I am mistaken, evidently intended to reduce the land administration of Bengal to the same dead-level system which prevails in Northern India, and which has so notoriously hampered the action of capital and clogged the springs of industry in that part of the country. Whether I refer to the provisions for the commutation of produce-rents into money-payments, to record-of-rights and settlement of rents, to preparation of tables of rates, to superintendence of contracts between the landlord and the tenant, the fixing of standard poles for measurement, the preparation of price-lists, or the like, the Revenue-officer has been made the fulcrum on which no small portion of the structure of the Bill rests. I would not object if the Revenue-officer were made only an executive or administrative officer, but as he has been vested with judicial functions, the objection becomes serious. Nothing, I conceive, can be more injurious to the interests of justice than a system which will place a judicial officer at the beck and nod of the Executive Government. On this point, I would reproduce the enlightened and wise remarks of Lord Cornwallis contained in the preamble to Regulation. II of 1793 :

> All questions between the Government and the landholders respecting the assessment and collection of the public revenue, and disputed claims between the latter and their raiyats (tenants), have hitherto been cognizable in the Courts of Maal Adawlut, or Revenue Courts. The collectors of revenue preside in these Courts as judges, and an appeal lies from their decision to the Board of Revenue, and from the decrees of that Board to the Governor General in Council in the Department of Revenue. The proprietors can never consider the privileges which have been conferred upon them as secure, whilst the Revenue-officers are vested with these judicial powers. Exclusive of the objections arising to these Courts from their irregular, summary, and often *ex parte* proceedings, and from the collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties, it is obvious that, if the regulations for assessing and collecting the public revenue are infringed, the Revenue-officers themselves must be the aggressors, and that individuals who have been wronged by them in one capacity can never hope to obtain redress from them in another. Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants. Other security must be given to landed property and to the rights attached to it, before the desired improvements in agriculture can be expected to be effected. Government must divest itself of the power of infringing, in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders. The Revenue-officers must be deprived of their judicial powers. All financial claims of the public, when disputed under the Regulations must be subjected to the cognizance of Courts of Judicature, superintended by judges who, from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants. The collectors of the revenue must not only be divested of the

powers deciding upon their own acts, but rendered amenable for them to the Courts of Judicature, and collect the public dues, subject to a personal prosecution for every exaction exceeding the amount which they are authorized to demand on behalf of the public, and for every deviation from the regulations prescribed for the collection of it. No power will then exist in the country by which the rights vested in the landlords by the Regulations can be infringed, or the value of landed property affected. Land must, in consequence, become the most desirable of all property, and the industry of the people will be directed to those improvements in agriculture, which are as essential to their own welfare as to the prosperity of the State.

The broad views which were expressed by the Government in 1793 apply with ten-fold force in 1884.

Patní tenures.

THE zamíndárs, not without reason, object to the incorporation of the Patní law in this Bill. They hold that every word of that law has during the last 65 years received an accepted and authoritative meaning; that it is well understood by the zamíndárs, the patnídár, the Court and the amlah; that to modernise the language will be to disturb the recollections and traditions of more than three scores of years, and that it is therefore highly desirable to leave the Patní law as it is, text and construction, on the principle of letting well alone. I concur in this opinion and would leave out the Patní chapter from this Bill.

I have hastily drawn up my principal objections to the leading principles of the Bill. I have not had time to comment on details. I propose to bring them forward when the Committee meet in November next.

KRISTODÁS PÁL.

The 14th March, 1884.

Memorandum of dissent from the finding of the majority of the Select Committee on certain provisions of the proposed Tenancy Bill.

1. Chapter IV of the revised Bill provides that a raiyat holding his land at a fixed rate of rent shall be—

(*a*) subject to the same provisions with respect to transfer, succession, &c., as a tenure-holder; and

(*b*) liable to be ejected from his holding on the ground of his having broken the terms of a written contract between him and his landlord on breach of which he is liable to be ejected.

The occupancy-raiyat claiming to hold his land at a fixed rate of rent is, in respect of his holding, placed in a more advantageous position than the ordinary occupancy-raiyat—

(*a*) by the landlord being debarred from pre-empting should the raiyat transfer his holding to a third party;

(*b*) in not being liable to be ejected should he use his land in such a way as to render it unfit for the purposes of his tenancy.

The majority of the Committee are of opinion that the incidents attached to an occupancy-holding the rent of which is fixed should be different from the incidents attached to an ordinary occupancy-holding; from this I dissent.

If the landlord is to be allowed the right to pre-empt in the one case, he should be allowed to do so in the other; if the raiyat is to be subject to eviction for rendering his land unfit for the purposes of the tenancy in the one case, he should be liable to be evicted in the other.

Every argument that can be adduced in favour of its being permitted in the one case would apply equally in the other.

Pre-emption is, I believe, an off-shoot of Muhammadan law; when the right to pre-empt is claimed among Hindús in Bihár, it is governed by custom.

The right to pre-empt under English law is, I believe, embodied in the provisions of this Bill for the first time, and only with the object of affording the landlord the means of protecting himself against persons who might purchase occupancy-rights with the intention of injuring him.

The landlord will be put to as great inconvenience by a hostile purchaser in the one case as he will be in the other; the same with a farm destroyed. It will be as useless to him in the one case as it will be in the other.

The effect of these provisions, coupled with Chapter VIII, will be ruinous to the landlord.

Every time a landlord elects to exercise his right to pre-empt, a title to hold at fixed rates will be set up

Every time a raiyat transfers his holding as a holding at fixed rates, or a transferee anticipating pre-emption takes measures to evade the law, even though the landlord does not wish to pre-empt, he will be compelled to contest the transfer, for fear his not contesting it at once may be taken as an admission of the transferee's right to hold at fixed rates in perpetuity.

Had the Committee seen its way to accepting my amendments and confined the operation of this chapter to holdings under mukarrarí pattá or raiyats whose rights had been declared by a decree of Court, although the landlords' rights would not have been restored to them in their entirety, the mischievous effects of encouraging persons to

attempt to evade the law by setting up the presumption would have been avoided.

2. *Chapter V.—Restrictions on sub-letting.*

In respect to the right mode of treating the subject of sub-letting, I am at variance, nearly on all points, with the majority of the Committee.

I do not think there is any necessity to place restrictions on sub-letting with the sole object of discouraging it.

I believe the conversion of the occupancy-raiyat who sub-lets into a tenure-holder will be detrimental to the best interests of the landlords.

I believe it necessary to bring the system under some control, partly with a view to protect the occupancy-raiyat, but mainly with a view to protect the poorest class of cultivators, the raiyat's raiyats.

The power to sub-let is a necessity to the raiyat, possibly of even greater importance to him than the power to transfer.

It enables the occupancy-raiyat to tide over his temporary embarrassments.

It enables the labouring classes, who might not otherwise succeed in securing land to assist in the support of their families, to acquire it.

It is legal, and the practice has hitherto been under no sort of restriction, and under no sort of restrictions will it ever be abandoned.

As long as there exists a class of people craving for the possession of land and poorer than the people in possession, or a class who can put the land to more profitable use than the persons who at present hold it, or as long as the line which divides an usufructuary mortgage from a sub-lease remains undefined, sub-letting will be practised.

The sub-lessees should be protected, and while there is yet time the system should be brought under some sort of control.

The matter may soon force itself on the attention of the Government in such a way as to make the shirking of the question an impossibility.

3. *Chapter V.—On enhancement.*

Under the provisions of the draft Bill submitted to the Select Committee for report, the landlord might enter into an amicable arrangement with his tenant to receive an enhanced rent up to six annas in the rupee on former rates, provided the enhanced rent did not exceed one-fifth the value of the gross produce of the land in staple crops.

He might enhance under suit, on the grounds that the rate paid for the land was below the prevailing rate in the neighbourhood, on the ground that the productive powers of the land had increased otherwise than through the agency of the tenant, and also on account of a permanent rise in prices, provided the enhanced rents did not exceed one-fifth the value of the produce in staple crops, and provided it should in no instance exceed double the previous rent.

Both in the instance of voluntary enhancement and enhancement under suit, the enhanced rent was to hold good for a term of ten years. Under the Bill as revised by the Select Committee, enhancement under contract is in no instance to exceed four annas in the rupee.

Below two annas or up to two annas it shall hold good for seven years, above two annas for fifteen years.

Judicial enhancement by reason of the holding being held at a rate below the rate prevailing in the neighbourhood may be made up to fifty per cent. increase on the former rate, and on account of a permanent increase in prices up to twenty-five per cent.

In any case decided on its merits, whether enhanced or not, the rate shall hold good for fifteen years.

The one-fifth limit has been abandoned in both instances.

Legal enhancement has, I admit, been made very much easier than it is under the present law; but I humbly submit that the omission of a limit which was admitted on all hands to be unascertainable is not sufficient reason for placing the restrictions on enhancement that the majority of the Committee have thought it necessary to place upon it, either in the way of reducing the limit or increasing the term.

It is to be presumed that tenants with fixity of tenure secured to them will only agree to an enhanced rent out of Court, when they know that the landlord by going to Court might get a very much higher rate decreed.

I do not approve of the policy which drives both landlords and tenants to appeal to a Court of law in matters which they can decide very much better for themselves.

In the matter of voluntary enhancement, it was only necessary to declare that enhancement under contract should be under registered agreement, and that the tenant in agreeing to it acted as a free agent.

If it was necessary to put a limit to the amount, the term should have been left to contract.

The fifteen-year limit being adopted in both instances, the landlord will exact the last farthing of what is due to him: we permit no compromise.

It is but fair to the Committee to say that I was alone in the desire to see the arbitrary limit on enhancement on account of the holding being held at a rate below the rent prevailing in the neighbourhood omitted; but I still think it would have been better to have left the matter to the discretion of the Courts.

The Courts have been given the power to make the enhancement gradual over a period of five years. They should be unfettered on both points.

4. *Chapter VIII.—On the right of an occupancy-raiyat to hold at fixed rates.*

Section 64 (1), Ditto (2), Ditto (3), } The first allows a raiyat whose rents have not been changed from the time of the Permanent Settlement to hold his land at that rent in perpetuity.

The second allows it to be presumed, until the contrary is proved, that a raiyat who has held his land at one rent for 20 years previous to the introduction of the suit has held it at that rent from the time of the Permanent Settlement.

The third makes the above rule applicable to commuted rents also.

In my notes filed with the rest of the papers on the Bill, I recorded my dissent with the provisions of these sections as they then stood in the Bill; the alterations now made are alterations in form, not in substance.

During our discussions in Committee no arguments were submitted, no attempt was made to justify their being originally embodied in Act X of 1859, none in reply to the assertion that they were an infringement on the terms of the Permanent Settlement, none to induce me to alter the opinion expressed by me in my notes.

The pleas urged for their retention in the present Bill were, that they represented the present law, that no case had been made out to induce the Committee to alter the present law, and that it is more difficult for the raiyat to prove his right to hold at fixed rates, than it is for the landlord to prove how, when and on what terms the raiyat was let into possession of the land.

We urged that the Permanent Settlement and its concomitant Regulations never intended that any class of raiyats other than mukarraridárs and

istimrárdárs should hold their lands at one fixed, unalterable rate in perpetuity.

That it never contemplated the creation of any "privileged" class among occupancy-raiyats.

That Act X of 1859, in creating a privileged class among occupancy-raiyats, trenched upon the proprietary rights of the landlords, and, in securing to the raiyats a right to hold their lands at a fixed rent in perpetuity, it reduced the proprietors to the position of annuitants on their own estates.

In declaring that the presumption shall run from twenty years previous to the introduction of the suit instead of from a fixed date it became a constantly accruing title.

That the privilege being a valuable one, one that it is to the interest of the raiyat to acquire in the future and to the interest of the landlord to prevent his acquiring, it was detrimental to the best interests of both to retain it in the Bill in its present form: it caused constant friction.

At the same time as I denied the justice of its enactments in Act X of 1859, I admitted that it would be harsh and unjust to cancel rights that had grown up under the operation of the present law.

To obviate all appearance of acting unjustly to raiyats who had secured such rights I proposed that the presumption should run from 20 years previous to the introduction of the Act, instead of, as it now does, 20 years previous to the bringing of the suit. I humbly submit that, had the Committee adopted this suggestion, raiyats who have secured to themselves the right to hold at fixed rates would have been secured in their titles, and the first instalment of justice would have been meted out to the zamíndárs. In a Bill which is admittedly being enacted to define the rights of landlord and tenant in the future, which is being passed to restore to the raiyat rights he is supposed to have been deprived of by the legislation of the past or that he has forfeited by his own carelessness or by his own acts, it is but fair to the landlord to restore to him anything that the loose legislation of the past may have deprived him of.

If it is found impossible to return to him what he has been deprived of in the past, he should at least be protected in the future.

Under the terms of the Permanent Settlement, only mukarrarídárs and istimrárdárs were allowed to hold at fixed rates; not so occupancy-raiyats.

Previous to Act X of 1859 any person claiming a right to hold at fixed rates or rents was obliged to prove his title to do so from a date 12 years antecedent to the decennial settlement, his title was otherwise not complete; that is to say, his title was not dependent on anything contained in the Permanent Settlement, but on the acts of the zamíndárs themselves previous to the settlement.

At the time of the Permanent Settlement the cultivators of the soil were divided into three classes—mukarrarídárs or tenure-holders, resident-raiyats with prescriptive rights of occupancy and non-resident-raiyats or tenants-at-will. Act X of 1859 was the first attempt made during 66 years to give non-resident-raiyats rights of occupancy in the soil; in their case, at any rate, the right to hold at fixed rates cannot be founded on anything contained in the terms of the Permanent Settlement, and the landlord should not be called upon to rebut the presumption: the onus of proving the right should be cast on the raiyat.

At the time of the Permanent Settlement, and previous to Act X of 1859, all raiyats with rights of occupancy were treated alike in the matter of rents—"all" were expected to pay the prevailing rate.

It is difficult to find out from a reference to the published papers relating to the passing of Act X of 1859 what led up to the embodiment of these provisions in that Act.

In the draft Bill published in 1857, it only says "hereditary raiyats holding at fixed rates of rent are entitled to receive pattás at those rates", but no mention is made of the 20 years presumption afterwards embodied in the Act of 1859.

Had the Bill of 1857 not been amended, the onus of proving his right to hold at fixed rates would still have been cast on the raiyat claiming it.

In all the published criticisms on this draft Act, Mr. Sconce alone fully discusses the raiyat's right to hold at fixed rates, but he founds the right upon the higher and more intelligible ground that "the Permanent Settlement was not one-sided—permanent for the landlord and not permanent for the tenant"; but he errs in drawing this inference mainly from the provisions of sections 51 and 60 of Regulation VIII of 1793. On a reference to these sections it will be found that the former refers to taluqs, and from the operation of the latter the Province of Bihár was exempted.

I would submit that, if we are to maintain the present law as against the landlord, simply because it is the present law, we are not justified in going beyond the present law in favour of the raiyat as we have done in many instances.

In reference to the declaration often made that it is easier for the landlord to rebut the presumption than for the raiyat to prove his right, I would only repeat that the persons who make this assertion have no conception of the difficulties in the way of the landlord; that it is easier for any given number of tenants to prove their landlord's handwriting than for the landlord to prove the execution of documents executed by men who could not write; and that all the old Regulations made it compulsory on the landlord to execute a document in favour of the raiyat. None made it compulsory on the raiyat to execute one in favour of the landlord.

The present law provides for cases in which the rent has always been paid in cash; under the present Bill, it is intended to go a step further and apply the rule to commuted rents.

Although I was in the unenviable position of sole dissentient on this point in Committee, I must still beg to be allowed to protest against this clause being made law.

It goes far beyond anything we are justified in enacting; it is equal to allowing every raiyat who formerly held at a grain-rent, and now holds at a cash-rent, to hold at one fixed, unalterable rent in the future.

Severely as these provisions bear on the landlords under the present law, they will bear ten times more severely on them in the future.

With the interchange of pattás, and kabúliyats made no longer necessary, the future is in the hands of the raiyat.

Useful as the powers to be given to the Local Governments under the Record-of-rights and Settlement of Rates Chapters may be made in the future, with these provisions unaltered our Courts will be deluged with litigation and the zamíndárs ruined.

Their effect can only be minimized by confining their provisions to rents to be commuted in the future and fixing a date from which the presumption is to count.

Their effect on the transfer and pre-emption clauses I have already noted.

5. *Chapter IX.—Sub-division of holding.*

The Bill declares an occupancy-holding shall in the future be transferable, and rightly declares it shall only be transferable as a whole.

A transfer of a portion of a holding is declared void as against the landlord.

The right to transfer has not hitherto been among the legal incidents of an occupancy-holding: the Courts have times out of number declined to give a transferee a right to hold the land when purchased as against the will of the landlord. In spite of the uncertain tenure of the transferee we see rights of occupancy being sold under voluntary sales and sold under decrees of Court in every district in the province.

In some districts it has become so fixed, it has become so common in spite of its illegality, that the custom now overrides the law.

The prevalence of the custom in spite of its illegality is now forcing the Government to declare it valid.

It is now proposed to legalize the transfer of an entire holding, but to declare it illegal as against a landlord to transfer a portion of a holding.

To legalize the transfer of a portion of a holding would be bad policy—bad for the landlord, worse for the raiyat; but to declare the act of a raiyat void as against the landlord and legal as against himself is to permit a state of things to grow up gradually which will eventually force the Government to interfere and legalize proceedings which they now deprecate.

To allow it to be illegal as against the landlord and legal as against the raiyat will not prevent the raiyat transferring it—it will only depreciate the market-value of the holding.

As the raiyat's necessities arise, he will dispose of his holding piecemeal from the fact of its being invalid against his landlord possibly at one-half of its value.

There are three ways of preventing the raiyat disposing of his holding piecemeal, namely:—

to declare a transfer of a portion of a holding illegal as against both landlord and raiyat;

to allow the landlord to treat the transfer as an abandonment of that portion;

to deem the raiyat to have broken a condition on breach of which he is, under the terms of an agreement between him and his landlord, liable to be ejected.

The last is the most drastic, and the one I advocated.

6. *Chapter X.*

Under this chapter the Local Government may, at the request of a landlord, at the request of a large number of raiyats or to avert a dispute, order a settlement to be made of the rents of the whole estate.

Under this chapter as it stands the rent-roll settled or ascertained of the estate must hold good for a period of 15 years after a settlement is made, provided nothing debarred the landlord applying for an enhancement.

(1) It would hold good in cases where the landlord applied for an enhancement, and the enhancement was allowed.

(2) It would apply in cases where his application was disallowed.

(3) It would apply where the landlord had a right to apply and did not.

(4) It would hold good in all cases where the settlement was made at the request of a number of raiyats.

(5) It would either compel the landlord to attempt to enhance the rents of all raiyats who were not parties to the application or to be debarred enhancing for 15 years.

(6) It applies to occupancy and non-occupancy-raiyats equally; it would therefore have this result, that it would at once give every non-occupancy-raiyat occupancy-rights.

(7) It will induce raiyats to demand a settlement in order to acquire rights they are not entitled to. It permits of no compromise.

The period should stand as it stood in the Bill, namely, 10 years.

It should only apply to cases in which the landlord applied for an enhancement or occupancy-raiyats had any dispute in reference to their rent.

A non-occupancy-raiyat should not be afforded the means of acquiring occupancy-rights under its shadow, or a most useful chapter will be turned into an instrument of oppression.

Chapter XV.—Incumbrances.

The last point on which I would wish to be allowed to record my dissent from the finding of the Committee is one of the utmost importance to the trader and also to the raiyat.

The Bill declares that a tenure, when sold under a decree of Court for arrears of rents, shall first be sold subject to registered incumbrances, but allows an occupancy-holding to be sold free from incumbrances.

The Bill certainly allows a person claiming to hold a lien on an occupancy-holding to protect his interests by paying up the arrears due and thereby to acquire a first mortgage; but this is not sufficient protection.

I do not agree with the Committee in thinking any distinction should be made between tenure-holders and occupancy-holdings.

Raiyats holding at fixed rates being subject to the same provisions as tenure-holders, will encourage litigation.

An attempt will be made to set aside the sales of occupancy-holdings by setting up the presumption to hold at fixed rates after sale.

Whether it will be the duty of the Court, the decree-holder, the debtor or the purchaser to enquire whether it is an ordinary occupancy-holding or an occupancy-holding at fixed rents that is brought to sale, or who will be responsible for any loss, should any occur, is not clear.

It was necessary to declare that the incumbrance to be protected was binding on the whole of the holding, not only on a portion of it, but nothing more.

In not affording the occupancy-raiyat this protection we injure his credit and force him to pay heavy interest where he might borrow on easier terms.

T. M. GIBBON.

Memorandum of dissent from the finding of the majority of the Select Committee on certain provisions of the proposed Tenancy Bill.

WHILE I concur generally with the majority of the Select Committee in accepting the provisions of the Bill as now revised, I think it right to add that in some particulars the interests of the tenants do not appear to me to be sufficiently protected. The Bill greatly facilitates the enhancement of rents, especially by the substitution of the simple ground of a rise in prices for the old rule which required proof of an increase in the value of the produce. While this great advantage has been given to the landlords, the check provided by section 75 (*d*)* of the original Bill has been taken away, the plea that the rate of rent paid by a raiyat is below the prevailing rate has been retained as a ground of enhancement, and the Bill provides no limitation whatever of the rent which a landlord may demand when a tenant (other than a settled raiyat) is first admitted to the occupation of land. Even in the case of a settled raiyat, the landlord may demand an increase of twenty-five per cent. on the rent previously paid. These sections put into the hands of landlords a powerful engine for enhancing rents up to the maximum amount which a tenant will agree to pay rather than give up the land. For, as agricultural holdings must, from time to time, fall into the hands of the landlords, and as the landlords are left free to let these out at almost any rental they may think fit to demand, it is evident that the prevailing rate will steadily increase, and that this rate will regulate the rents not only of tenants newly admitted to occupation, but of the general body of the tenantry. For this reason, the retention of the prevailing rate as a ground of enhancement appears to me to be fraught with serious danger, and I should be glad to see it eliminated from the Bill.

Similarly, I am of opinion that section 53 of the revised Bill does not sufficiently guard the interests of the tenant in cases in which the landlord applies for a commutation of produce-rents. The section ought to provide, first, that the money-rent shall not in any case exceed the rental at which the holding is entered in the landlord's road-cess returns: and, secondly, that if the commutation is based on the average value of the rent received by the landlord during the preceding ten years, a substantial deduction shall be made from such value in consideration of the whole risk of cultivation being taken by the raiyat. Provision was made for such a deduction in the draft Bill of the Rent Commission, and in the Bill submitted by the Government of Bengal.

The wording of section 96 of the Bill, relating to abandonment, seems to me likely to open the door to serious abuses. When a raiyat has been deprived of his holding under the plea of his having abandoned it, it is of very little use to authorize him to institute a suit for the recovery of possession. If this section is necessary at all, its operation should be confined to holdings in the possession of non-occupancy-raiyats. There is not the smallest reason for extending it to occupancy-holdings, as, in these cases, the landlord's rent is completely secured by his power of bringing the holding to sale for arrears.

H. J. REYNOLDS.

The 17th March, 1884.

* This clause declared that "the enhanced rent shall not in any case exceed one-fifth of the estimated average value of the gross produce of the land in staple crops, calculated at the price at which raiyats sell at harvest-time".

Memorandum of Dissent from the Finding of the Majority of the Select Committee on the proposed Bengal Tenancy Bill.

Principles of the Bill.

I would base my dissent to this Bill on the broad ground that it does not settle the land law of Bengal on a firmer, juster, or more satisfactory basis than it now stands on, and that it will neither keep the cultivation of the soil in the hands of a substantial peasantry able to withstand the vicissitudes of seasons, nor tend to promote the accumulation of wealth, the sound growth of credit, and the progress of agricultural improvements; also that while it fails to accomplish the only objects which in Lord Hartington's opinion justified the introduction of such a Bill, it at the same time involves great and entirely novel departures from both the ancient custom and the existing law of Bengal, a course which that very same authority has with the true instinct of statesmanship condemned as unadvisable.

Despatch, 17th August, 1882, paragraph 21.

Despatch, 17th August, 1882, paragraph 9.

I find it difficult to understand what are the principles on which Government proposes to change the present law of landlord and tenant. In the Statement of "Objects and Reasons" (which it is customary to send to the Members of the Council with every Bill) it is stated that Act X of 1859, though admittedly beneficial, was in some important points so unsuccessful that it had resulted in Bihár in rack-renting of raiyats and oppression by zamíndárs, and in Eastern Bengal in preventing zamíndárs from obtaining enhancements to which they were legally entitled and even in difficulty in recovering their legal rents. From this we may gather that the main objects of the Bill are to protect raiyats on one hand and on the other to facilitate the zamíndárs' collection of legal rents and their making legal enhancements of the same.

If it can be shown that the results of Act X of 1859 have really been such as Mr. Ilbert states (which, however, I would, as far as Bihár is concerned, most emphatically deny, and of which, I would here specially notice, no proof whatever has been shown,) then no landlord or raiyat could oppose equitable measures taken to attain what, as I above notice, appear to be the nominal objects of the proposed Bill, nor do I see that in any of their various memorials the zamíndárs have raised the slightest objection on these points.

Had the Bill adhered simply to these objects, all would have been well; but departing altogether from them, clauses of the most revolutionary character, and infringing strictly guaranteed rights have been introduced, which have created a great deal of unrest and mistrust in the minds of the zamíndárs. It is true that the Government of India have never said that they wish to deprive the landlords of their vested rights; on the contrary, they have always declared that they do not wish in any way to trench on the vested rights of landlords that were guaranteed to them at the time of the Permanent Settlement, but the result of the passing of this Bill would be practically to negative such declaration.

No legislation whose object it is to deprive one class of its vested rights (without giving that class any compensation) and to give those rights to another class, has, I think, as yet been passed in India, nor do I think that legislation of this sort is ever likely to be enacted. Some such theories have been advocated by certain advanced thinkers in England, but in India until this Bill appeared no such theories had been heard of, and even in England there is a marked difference of opinion on this point among the most advanced thinkers.

Notwithstanding that the Government of India have, as I before remarked, never officially said that they wish to do away with the Permanent Settlement, and that the Secretary of State in his letter is most distinct in declaring that he

is against any legislation that is likely to trench on the vested rights of any class of the community. Notwithstanding this, the proposed Rent Bill has created an amount of ill-feeling and distrust never before excited in India by any Bill affecting the rights of the people, and the cause of such feeling is that, although these professions have been made by Government, still the most of the clauses of the proposed Bill are revolutionary and are directly against the principles on which we are supposed to legislate. The feeling to which I allude has of late been greatly aggravated and intensified by a memorandum that was published by the Government of Bengal on 5th January, 1884. I quote below a passage from this memorandum, and the principles contained in it are, I would suggest, quite enough to create distrust and ill-feeling in the mind of everybody interested in the Bill. The passage runs thus :—

"The Lieutenant-Governor then thought that, while it was well * * * * * to have history on one's side, yet the decision of the question turned more on appeals to the requirements of the present * * * * * than on historical researches. He therefore paid more attention to the practical character of the proposals made in the Bill than to their historical justification."

Apparently overlooking the fact that our rights as zamíndárs have been clearly defined and legislatively recorded at the time of the Permanent Settlement, the Lieutenant-Governor here implies that our rights, and I suppose the raiyats' rights too, are but indistinct in the haze of historical research, and that in consequence alleged present wants affecting those rights should be met by measures, framed not in accordance with the past guarantees of the Government of India, but in the light of views held by a present Local Government. On this ground, he has, it would seem, been biased by views formed with regard to what some consider to be present necessities, and has disregarded the zamíndárs' vested rights.

We the zamíndárs on the other hand hold that we are one of the classes most interested in this Bill, and that our rights naturally should not only be fully enquired into but protected.

It may be thought, though I do not for one moment admit it, that the landlords' rights are prejudicial to the interests of the people at large. If so, the matter ought boldly to be faced, and landlords be allowed "compensation for disturbance" and ordered to surrender their rights. But it is hardly fair to the zamíndárs that the letter of the Government of Bengal of September last (which it now seems did not exhaustively enter into the question of the landlords' rights, and which had great weight with the deliberations of the Select Committee) should ever have been put forward before that Committee as the result of an impartial enquiry, and that the able minute of the Chief Justice which fully entered into the legal aspects of the question should not have been published with the other official papers.

The zamíndárs as a body have objected to the Bill ever since it came out of the hands of the Rent Commission. Meetings were held in almost every district of Bihár and Bengal, and in all these meetings the revolutionary clauses were condemned, and it was the general opinion that the Bill was a wanton interference with the existing customs and the ancient land law of the country. Raja Siva Prasad in Council in March last correctly described what are the feelings of the landed proprietors, when he said that, "if such a Bill passes, it will shake the faith and confidence of the people."

Under this head I would only add that the general principles of this Bill, *viz.*, the proposal to invest occupancy-raiyats with these rights in all fresh lands on the very day that such lands are settled with them, the restrictions that are for the first time proposed to be placed on the right of free contract in favour of the raiyats without giving any reciprocal advantage to the zamíndár, and the limit of 25 per cent. enhancement that is also for the first time proposed to be placed in a Bill, one of the primary objects of which is to give the landlord further facilities for the enhancement of his rents, can but be looked upon by the zamíndárs as not only a wanton digression from the recognized laws and customs of the country, but as a confiscation of their vested rights. The Bengal and Bihár zamíndárs have as a class been the most loyal of Her Majesty's subjects in India and trusting in the known good faith of

the English Government they have always believed that no Government of India would wish or think of depriving them of their vested rights or of turning a deaf ear to their representations.

Under these circumstances the zamíndárs are naturally alarmed at the publication of such an official memorandum by the Bengal Government as that I have above quoted from, one which leads them to believe that the Government of Bengal has not thought fit to make a full enquiry into their rights before committing itself to the opinions expressed in its letter of September last.

I would ask what have the zamíndárs done to deserve this treatment? Are they really as rapacious and unscrupulous as the Government of Bengal thinks them to be? If so, where are the facts to show it? Have we got any statistics to show that it is the general custom in Bengal for the zamíndárs to change the lands of the tenants every twelfth year? Are there any statistics to show that the treatment of the non-occupancy raiyats is so very oppressive as to justify the introduction of such an idea as compensation for disturbances in our legislature, an idea which is entirely novel to the people of the country, and which was not even dreamt of by the ancient law-givers? Is there in fact any proof that rack-renting and oppression in Bihár is so common, as to call for the destruction of the proprietary rights?

A great number of official opinions have been published, but few or no statistics to show that the conduct of the zamíndárs is really so oppressive as described in the above-mentioned letter of the Bengal Government. Further I would ask, is there any ancient law to show that according to ancient custom the raiyats had occupancy-rights in all the village lands, and that the zamíndár had no proprietary rights in any lands except those that he cultivated himself?

I would now at more length record under different headings those points in connection with the proposed Bill as it left the hands of the Select Committee which lead me to dissent from it.

The Permanent Settlement.

Throughout the whole of the discussion of the Rent Bill it has always been officially declared that it is not the object of the Government to infringe on any of the rights that were guaranteed to the zamíndárs or raiyats at the time of the permanent settlement. On this point, therefore, the zamíndárs, the raiyats, and the Government are all at one. The question now to be decided is, what were these rights? On this point, however, there is a great difference of opinion, though I for one cannot make out how there can possibly be any difference of opinion on a well-defined question of this sort. The wording of the permanent settlement regulations is most clear, and they distinctly declare the zamíndárs to be the actual "proprietors of the soil" and not mere rent-receivers, as some people seem to imagine.

There are others who go beyond this, and hold that the zamíndárs as a class did not exist before the time of the permanent settlement, and that before this period they were mere collectors of rent for the Government. In answer to these, I enclose for publication translations of two* firmans granted by the Muhammadan Emperors to two of the oldest families in Bihár; one of these was granted to the family of Bhojepur or Doomraon, and the other to the family of Darbhangá; and these clearly show that at least some of the zamíndári families of Bihár were in existence not only before the time of the permanent settlement, but even before the establishment of the English Government in any part of India.

As regards the rights conferred on the zamíndárs by the permanent settlement, I cannot do better than quote a passage from the regulation itself. It runs thus :—

"The Governor General in Council declares to the zamíndárs, independent talúqdárs, and *other actual proprietors of land*, that no alteration will be made in the assessment which they have respectively engaged to pay, but that they and their heirs and lawful successors will be allowed to hold their estates at such assessment for ever. The Governor General trusts that the proprietors of land sensible of the benefits conferred upon them by the public assessment

* One firman has not been received from the Hon'ble the Maharaja.

being fixed for ever, will exert themselves *in the cultivation of their lands* under the certainty that they will enjoy exclusively the fruit of their own good management and industry. To discharge the revenues at the stipulated periods without delay or evasion, and to conduct themselves with good faith and moderation towards their dependent taluqdárs and raiyats, are duties at all times indispensably required from the proprietors of land, and a strict observance of these duties is more than ever incumbent upon them for the benefits which they will themselves derive from the orders now issued."

Sir John Shore in one of his minutes writes thus :—

"I consider the zamíndárs as proprietors of the soil, to the property of which they succeed by right of inheritance, according to the laws of their own religion, and that the sovereign cannot justly exercise the power of depriving them of the succession nor of altering it when there are any legal heirs; the privilege of disposing of the land by sale or mortgage is derived from this fundamental right, and was exercised by the zamíndárs before we acquired the Dewany."

These are the opinions of Lord Cornwallis and Sir John Shore, the actual framers of the Permanent Settlement, and both of them are emphatic in declaring the zamíndárs to be the "proprietors of the soil." These opinions, moreover, were endorsed by no less a personage than Pitt. Mr. Dundas, the President of the Board of Control, in a letter to Lord Cornwallis, says :—

"I thought it indispensably necessary that the measure should originate with the Board of Control, and likewise that I should induce Mr. Pitt to become my partner in the final consideration of so important and controverted a measure. He accordingly agreed to shut himself ud with me for ten days at Wimbledon and attend to that business only. Charles Grant stayep with us a great part of the time. After a most minute and attentive consideration of the whole subject, I had the satisfaction to find Mr. Pitt entirely of the same opinion with us. We therefore settled a despatch upon the ideas we had framed, and sent it down to the Court of Directors."

As regards the rights of the raiyats, I might simply mention that the rights that are now proposed to be given to them are very different from those that they enjoyed at the time of the Permanent Settlement. In fact, they had properly speaking no proprietary rights in the land at all. They could not transfer their holdings, nor is there anything in the regulations to show that the raiyats had the right to hold on at fixed rates without the consent of the zamíndár. There is besides nothing to show that the rate of rent was regulated by the value of rice, wheat, and some other cheap food crops, which, according to a late declaration of the Secretary of the Bengal Government, are the only "staple crops." I would here quote a passage from Sir John Shore on this subject :—

"It is, however, generally understood that the raiyats by long occupancy acquire a right of possession to the soil, and are not subject to be removed; but this right does not *authorise them to sell or mortgage it, and it is so far distinct from a right of property*. This like all other rights under a despotic Government is precarious. The zamíndárs, when an increase has been forced upon them, have exercised the right of demanding it from the raiyats. If we admit the property of the soil to be solely vested in the zamíndárs, we must exclude any acknowledgment of such rights in favour of the raiyats, except where they may acquire it from the proprietor.

"In every district throughout Bengal, where the license of exaction has not exceeded all rule, the rents of the land are regulated by known rates, and in some districts each village has its own. These rates are formed with respect to the produce of the land at so much per bigha; some lands produce two crops a year, some three; *the more profitable articles, such as mulberry plant, betel-leaf, tobacco, and sugarcane, render the value of the land proportionably great*. These rates must have been fixed upon a measurement of the land, and the settlement of Turymul may have furnished the basis of them. In the course of time cesses were superadded to that standard, and became included on a subsequent valuation, the rates varying with each succeeding measurement. When a measurement of the land takes place, the existing rates are confirmed and generally with some additions."

In this passage the definition of staple crops is not limited to rice and wheat and the other cheap food crops; on the other hand, it shows that in those days the value of the more valuable kinds of produce like tobacco and mulberry was taken into consideration.

Before concluding this subject I quote a passage from another high authority who lived immediately after the Permanent Settlement. I refer to Lord Metcalfe, who, as is well known, was no admirer of the Permanent Settlement, as is evident from the passage I quote below, but he also is of the

opinion that the zamíndárs were vested with the proprietary rights in the soil by the Permanent Settlement :—

"I need not say that I am no advocate for the regulation proprietors of our creation. I consider their creation to have been an enormous error, which has not been attended by any benefit whatever; but having created them, and declared them to be proprietors, we gave them, I conceive, after the reservation of the Government revenue, all the rights of property that it was in our power to give, that is, all the rights that did not previously belong to others. We had no right to destroy the pre-existing property of others, in order to confer it on our new fangled proprietors; we could not legally or justly give them a single field which previously belonged to others; but we could and did give them the right of the Government in every field in their zamíndárí, and we superadded the full property in lands, not owned or occupied on a permanent tenure by others. Having done so, although we have a right, and are bound to protect the ancient cultivating proprietors and occupants in all their rights, whatever they were, and ought to be ashamed of ourselves for not having done so, we have no right to step in, between our proprietor and the cultivator of his own planting, on lands declared to be his own property, with a view to destroy the engagement which they have mutually entered into, and prescribe others of our own fashioning * * * * * * * * * I would let the regulation proprietor have all his just rights. It could never have been intended when we created proprietors that they were to be merely entitled to a percentage on the revenue. It was meant that they should be really proprietors, which they are and ought to be, in every case in which that would not affect the previous rights of others, but as we had no power, that is, no lawful power, to take away the rights of others, we have not given them one jot of those rights, and are bound to maintain the ancient proprietors and holders of permanent rights against those of our own creation."

In a disputed legal question of this sort, it would have been well if the opinions of the High Court Justices, the Advocate General, and the other law officers of the Government, and some of the leading lawyers of the country have been consulted. But in this matter, as in the matter of statistics, I find a remarkable want of information among the official papers that have been published. One of the zamíndár's chief stand-points is the Permanent Settlement, and on this point it was most necessary that the Select Committee should have the best legal opinions procurable. No such opinions have, however, been consulted.

Chapter III of Bill—Tenure-holders.

Tenure-holders represent but one portion of the proprietary interest in land, as distinguished from the raiyati interest. I do not see any special necessity for legislating on the present occasion for tenure-holders, properly so called. Their rights are pretty well ascertained, and as a class they at least are quite able to look after their own interests. I could understand the formal reproduction of the provisions of Act VIII of 1869, B.C., with respect to tenures and undertenures, but I fail to perceive sufficient reason or justification for changes in the substantive law in this respect. In my opinion, the whole of Chapter III should be recast, the provisions of Regulation VIII of 1819 retained in their integrity, and the relevant provisions of the Bengal Council Act VIII of 1869 simply reproduced.

The injustice of substantive changes is very much enhanced by the direct and indirect promotion of certain occupancy raiyats (*viz.*, those who sublet and those who possess more than 100 bighas) to the status of tenure-holders, as explained at length by my hon'ble colleague.

Chapter IV of Bill—Raiyats holding at fixed rates.

Whatever might have been the necessity felt by the zamíndárs for facilities in the collection of arrears of rent since the imposition of new Government cesses on lands, and however urgent the necessity felt by a certain class of landlords in Bengal proper for increased facilities as to enhancement of rents, I may say that the zamíndárs of Bengal and Bihár are entirely at one that they would much rather put up with existing inconveniences and hardships, than accept the gift of the proposed legislation. If however the law is to be changed, it is but fair and just that the novel provisions of Act X of 1859, which are admitted by the highest authorities to have worked wrongful loss to the zamíndárs, should be modified or repealed. The presumption arising in the tenants' favour from 20 years' holding at an uniform rate of rent may be said

now to have worked out its object, as every tenant who cared for it, has had an opportunity for the last 25 years to insist upon the granting of receipts andto take care for their preservation. Such being the case, apart from any other facts, it would have been proper to extend the period of uniform payment which should give rise to the presumption. But the necessity for such a change is rendered more urgent by the fact that in its existing shape it works positive and unmerited loss to the zamíndár. The Hon'ble Rai Bahádár has in his dissent already called attention to the recorded opinions of the Hon'ble Mr. Reynolds in his memorandum, dated the 18th May, 1881. The same opinions have been recorded by Mr. Dampier, Senior Member of the Board of Revenue and President of the Rent Commission, in his note dated the 19th May, 1881, and although the Hon'ble Mr. Reynolds thought fit to change his mind, the arguments which were advanced by himself and by Mr. Dampier have not been refuted. Mr. Dampier condemns the retention of the presumption section not only on the ground already advanced by the Hon'ble Mr. Reynolds, that the real effect of such a statutory presumption has been not conservative but productive, creating "in the vast majority of instances new rights, instead of merely establishing those which already exist, but for the support of which full proof is not attainable," but also on the further ground of public policy that "the presumption amounts practically to a declaration that when an estate passes to a purchaser from a hostile vendor at a forced sale, in the majority of which cases, no zamíndárí papers are available to the purchaser, every tenant who has held without change of rents for 20 years shall acquire the right of permanent occupancy at a fixed rent." Mr. Dampier adds a further argument on the ground of public policy, that such a provision drives the landlords to institute enhancement suits every 20 years, "lest their rights should pass away *sub-silentis*."

Vide Sections 3 and 4, Act X of 1859.

Report of the Government of Bengal on the proposed amendment of the law of Landlord and Tenant in that Province, Vol. I, pp. 181-182.

Ditto, Vol. II, p. 460.

Chapter V of Bill—Occupancy-raiyats.

In approaching this subject we must bear in mind the great distinction between the actual cultivator and the middleman. Whatever increases the prosperity of the agriculturist conduces to the prosperity of the nation, but the middleman whose prosperity is dependant on what he can squeeze out of the cultivator, is a useless member of society, who simply adds to the difficulties of the situation. Whatever tenderness is shown by the ancient custom of the country or the "official literature" of byegone generations, is limited to the cultivators of the soil and not to those who having gone into occupation of land for agricultural purposes, set themselves up as microscopic proprietors displaying within their limited spheres the quintessence of all the possible vices and abuses of the zamindárí system. If there is to be a radical change in the law, this is a class of men who ought to be excised from our agricultural system, as they are the greatest hindrance towards the rise of that "substantial peasantry able to withstand the vicissitudes of seasons" which it is desired to bring into existence. I am quite willing to recognize the necessity of allowing the validity of sub-letting in certain special cases, but beyond that limit I would not go. In all cases where the occupation of land was allowed for agricultural purposes, I would insist upon the right of occupancy being made conditional upon the *bonáfide* cultivation of the land by the tenant himself, or by hired labour, and I would not allow the transfer to any other than a resident cultivator. Two of my amendments proposed in Committee embraced this question. The one allowing the sub-letting of an entire holding in case of females, minors, &c., was adopted, but the other which would restrict the transfer to *bonáfide* resident cultivators was not carried.

It is a well established fact, that sub-letting has brought ruin upon the cultivator; and that middlemen have the most to answer with respect to the embarrassment of the agricultural situation, and that a raiyat holding direct under the zamíndár is in a much better position than the *korfa* or *kalait* raiyat. In the face of this, it is simply a wanton aggravation of

A good sample will be found at pp. VIII, IX, 355-60 of the first Vol. of an avowedly anti-zamíndárí compilation entitled "The zamíndárí Settlement of Bengal" quoting from various official and non-official utterances.

existing difficulties to raise occupancy-raiyats *en masse* to the status of tenure-holders and rent-receivers, and to afford facilities to other than cultivators to acquire by occupation or otherwise the right of occupancy. Taking for granted that the raiyat requires protection from the arbitrary act of zamíndárs who purposely shift them from land to land to prevent their acquiring a right of occupancy in any one given bit of land (a practice which I contend has not been proved), the Select Committee would create a presumption in the raiyat's favour (*viz.*, that because they now hold land they *must* have held that land for 12 years) a presumption opposed in itself to the actual state of things in the agricultural population, as occupancy of land is daily changing owing to causes over which the zamíndár has no control. This presumption ignores the circumstances that there are vast areas of riparian land in these provinces, which are constantly the subject of alluvion and diluvion; that throughout the border lands of these provinces there is still in force an active process of reclamation from jungle; that in the interior districts the pressure of population upon the soil has led and is daily leading to the encroachment of cultivation upon waste and pasture lands; that the existence is notorious of a large number of *paikasht* cultivators, who try their chances all round without being attached to any particular locality; and that there are numerous cases in which old raiyats voluntarily relinquish their jotes owing to a diminution of the productive qualities of the soil, and other sufficient reasons. Taking all these circumstances into consideration, can it be said that a fair and reasonable judge, in the absence of any other evidence whatsoever affecting the probabilities of the case, could, from the mere fact of a tenant's holding a plot of land to-day, deduce, or much less feel himself bound to deduce, that the same tenant must have occupied the whole or at least a part of the same plot for the last 12 years?

With reference to the proposed presumption that all raiyats have occupancy-rights, I would here cite a few instances where I think it will be simply impossible for the zamíndár or thiccadar, though the raiyats have not got occupancy-rights, to rebut such a presumption.

1st.—In those cases where the landlord acquires possession by buying up the property at an enforced sale for Government revenue, the defaulting zamíndár, whose property is thus bought up, is naturally in the majority of such cases hostile to the man who has bought it, and so refuses to give up the papers of past years. How is a zamíndár in such cases to rebut the presumption.

2nd.—Where one estate is let out to two or more patnídars or thiccadars, how is a patnídar in such cases to rebut the presumption that the raiyat has not been holding lands in the other patní or thicca land of the estate.

This leads me to protest against the proposal to invest an occupancy-raiyat (though his holding may be only one yard in area) with occupancy-rights in all fresh lands he takes up, on the very same day that such lands are settled with him. Because a raiyat can cultivate a small piece of land, that is no reason why he should be able to cultivate large bits of land. He may take them simply to sub-let or sell it.

Then, too, the word 'estate' is most vague. An estate might mean a small bit of land, or it might mean large tracts of the country. The word 'village' would be more convenient. It has a well-defined boundary and it represents a specific area.

Transfer and pre-emption of occupancy-rights.

It is abundantly clear, that by the ancient land law of the country no raiyat, resident or non-resident, had the power to sell or mortgage his raiyati interest.* The Legislature and the Judges have respected this by holding that the right of occupancy is not transferable against the will of the landlord, except by custom. The contention on the part of the Government seems to be, that, as a matter of fact, the custom has grown everywhere, but the statistics to which appeal is made are not really to the point, as they do not show in how many cases the zamíndár was a consenting party before or after the transfer.

* "It is generally understood, 'that the raiyats by long occupancy acquire a right of possession in the 'soil, and are not subject to be removed, but this right *does not 'authorize them to sell or mortgage 'it.*"

Mr. Shore's Minute of 28th June, 1789; III, Harrington's Analysis, page 434.

A custom of this kind would be so notorious that there ought not to be the slightest difficulty in proving it in a Court of Justice to the satisfaction of all classes and interests, and I maintain that the wholesale introduction of transferability is uncalled for in the absence (1st) of specific and proper evidence to show that it is universally recognized; and (2nd) of any particular instances of failure of justice in the Civil Courts from the inability of purchasers to establish a really existing and flourishing custom. Such a wholesale extension of occupancy-rights, as is now contemplated, must be detrimental to both proprietor and village community alike, as it takes from the former the power of keeping on his land those peaceful and friendly raiyats whom it is his interest to retain, and opens the door for them to be ousted by mahájans or hostile zamíndárs, who can buy up their rights, and settling a different class on their lands, bring quarrels, litigation and ruin into a village.

I would suggest that the old custom of the country, by which such holdings were not transferable, was one specially tending to the security and well being of the village community, as it prevented to a great extent those who had no interest in it forcing their way therein and by setting up interest opposed to those of the community at large, and of their proprietors, ruining the village peace and prosperity.

In support of this theory I would point to the disastrous consequence attendant on right of transfer having been recognized among the Dekkhan raiyats, and also to the disturbance among the Sonthals, due mainly to the oppression of the mahájans into whose hands they had fallen; and I desire to protest against the raiyats on my own and other zamíndáries being as a natural result, if this Bill is passed, made over to the tender mercies of mahájans and other land speculators.

It is true that compensation for the introduction of the new right of transfer is offered to the proprietor in a proposed right of pre-emption, but why, I would ask, should the proprietor be forced to buy what is already his own? The proposed restricted right of pre-emption will be but small relief to the proprietor, and I would suggest that if allowed at all it should be made far more effective by its extension to every transfer of a raiyati right (except by way of inheritance), and if the same right could be extended to the case of "tenures" as well a self-acting machinery would be provided for the extinction of middlemen's interests, much to the good of all parties concerned. *I would much sooner prefer free sale to* bonâ-fide *resident cultivators*, than the right of sale to any one and every one, subject to a phantom right of pre-emption. It is supposed that the transferability of occupancy-rights would be of benefit to indigo planters in Bihár, but I know many such who are opposed to the proposal, and the Bengal planters as a class are entirely opposed to the same.

Commutation of rents.

In considering this question I would notice first, that Bhowli or rent payment in kind is not the custom in my own estates, nor do I consider that in those parts it would be as advantageous to either proprietor or cultivator as money payment of rent. But there are parts of Bihár peculiarly circumstanced, where Bhowli is the custom, and money payment the exception; and suddenly to introduce so complete a change as is contemplated under this heading, would, I think, press very heavily on all classes. This is a matter which may fairly be left to time, the experience of past generation shewing that, with the gradual increase of prosperity and civilization, payments of rent in kind have a tendency to change into money payments, and I would deprecate such a change being suddenly forced on.

Personally this question does not much affect me; but as the representative of the Bihár zamíndárs, I would here record their opinions, and that I think they are worthy of consideration.

The practice of paying rents in kind was no doubt the original method for paying rents, and its retention in parts of Bihár is due to its manifold advantages in the present condition of the people, as well as to the known desire of the people of this country to stick to old customs. Akbar's great Hindu financier Todur Mul had fixed the rent of the raiyat at $\frac{1}{3}$ of the gross produce. Aurungzebe had increased this to $\frac{1}{2}$ (one half); and the zamíndárs, taking into consideration the difficulty of the appraisement of the price of the straw, have fixed the share at $\frac{9}{16}$ths (nine-sixteenths) of the produce of the crops, and giving to the raiyats the whole value of the straw.

Where the agricultural community has no other occupation to fall back upon, it is distinctly an advantage to the cultivator, that however small the produce of his field in a season of scarcity, he should retain a part of it; on the other hand, a tenant who is bound to pay a uniform money rent, finds that in many cases the value of his whole crop is not equal to the landlord's fixed money demand. Viewed in this light, the cultivator who pays rent in kind is much better prepared to meet scarcity, than the tenant who pays money rent.

As an example of what I mean take a year in which crops have totally failed, the Bhowli-holder is liable for nothing to his landlord that year as he has no crop to share with him, but the money rent payer is liable for his full year's rent irrespective of the failure of his crop, and may be driven either to borrow at ruinous rates of interest at a time when his credit is peculiarly low, or to pay the costs and interest of a suit by the landlord. The provision for commutation of rents in kind is therefore held to be undesirable as rendering the agricultural population more liable to suffer in times of scarcity and famine.

Even in ordinary times (as the demand for rent generally coincides with the harvest), tenants paying rents in cash have in some cases, though the cases may be rare, to part with their grain at very low prices. The Bhowli tenant on the contrary, has no such sacrifice to make.

Then, again, in large tracts of alluvial formation, when a single season may make an immense difference in the productive qualities of the soil (either for good or for evil) zamíndárs and raiyats find the Bhowli system to be that most convenient and equitable for settling rents.

Further, in a Bhowli system of settlement, the landlord every year gets the benefit of sharing with the tenant any increase in the productive powers of the soil, or in the area, or in the value of the produce; and if there is any decrease, the loss is shared by both the parties. There is therefore much less cause for any of the parties to be discontented, and then there is much less occasion for the landlords to institute suits for enhancement.

So much for the commutation itself. As to the manner of working it out, the revenue-officer is to be empowered to fix the money rents, and the Bill provides that in settling such rates, he should be guided by the rate of money rents prevalent in the neighbourhood, and the average value of the rent actually received by the landlord for the last 10 years. These rules are but vague; and as we know that, as a fact, different officers take very different views on all such matters, I do not think that a question of such vital importance should be left to a revenue-officer to decide according to his own individual opinion, and that such a matter is one that can only be decided satisfactorily by mutual agreement or private contract between the landlord and his tenant. It is also argued on the side of the zamíndárs that it is more profitable to the landlord to get the share of the produce in kind, than to get a money rent, because (unlike the raiyat) he can afford to keep back his grain from the market at harvest time, and sell it to better advantage at a time of the year when the price of the grains is dear. This commutation therefore would amount in practice to a reduction of the income of the zamíndárs, which I do not suppose is the real intention of the Government.

I hope shortly to send in some statistical information regarding this, which I have not as yet had time to complete. There is another point in connection with this which is worthy of notice in the raiyat's interest, *viz.*, that where the Bhowli system holds, the zamíndár alone at his own cost keeps up the necessary dhoor bandhs for irrigation purposes, and no cost in connection with this, although they directly benefit by it, falls on the raiyats. Whereas where rent is payable in money, if the zamíndár improves the productive powers of the land by irrigation works the raiyat is liable to have his rents enhanced, and according to local custom is expected to share the cost of keeping existing bandhs, &c., in repair with his zamíndár.

Enhancement.

About this subject as, on the subject of realization of rents, it is thought advisable that the zamíndárs should get further facilities. The present law allows enhancement of the rate of rent through the Civil Court on three grounds only, the most important being, that the value of the produce, or of the productive power of the land, has been increased, otherwise than at the expense or by the agency of the raiyat, and everybody must admit that this principle is very fair, but it has been found in practice that it is most difficult to prove the "increase" in court of law, and so enhancement through the Law Courts is almost at a dead lock. The zamíndár therefore finds it easier and less expensive to enhance his rents by private contract, but even this is by no means at all easy to accomplish owing to the unwillingness of the raiyats to pay any enhancement which they think is not obtainable through the Civil Court.

However, since Government has begun to publish the weekly price-lists of food crops in each district in the Gazette, we have better statistics to show the rise in prices. I therefore consider the proposal to make these price-lists the conclusive evidence of a rise in the prices a very good one, and by doing this the zamíndárs will no doubt get a certain amount of relief. I would however propose that the general wording of the present law should be retained and that the ground of enhancement should not be restricted, as is now proposed.

There are cases where the value of lands improves through other causes than those contemplated in this Bill; such cases might be rare and perhaps difficult to prove, but that is no reason why their existence should not be provided for.

The definition of "staple crops" in connection with enhancement, should not, I think, be limited to cheap food crops only.

All the old regulations are unanimous in declaring that the zamíndárs should enjoy the benefit of a change in the crops in the country. Sir John Shore mentions this to have been the custom before the Permanent Settlement. At the present time, too, not only the produce of the food crops but sugarcane, tobacco, betel, and various other crops also are appraised in those parts of the country where the rent is received in kind, and in the other districts we find a marked degree of difference in the rate of rents between those lands that grow cheap food crops and those that grow the more valuable crops.

This provision therfore is a "novel departure from the ancient law and the recognized customs of the country."

I see no necessity for any such additions being made to the old law which left it to the Court to give a "fair and equitable rate of rent" in all disputed cases, nor do I see the necessity for limiting the rate of enhancement. The enquiries which the Civil Court would have to make in each case would put that Court in the best position to know what rate of enhancement would be fair and equitable, and there seems no sufficient reason for curtailing its power, and preventing its giving a higher enhancement than 4 annas in the rupee, even though it might be satisfied that a higher rate would be fair and equitable.

As regards the private enhancements I fail to see the justice of doing away with free contract in this case. It is no easy thing for a landlord to get any enhancement by a private arrangement, and it is most undesirable that any loophole should be left for future dispute in such cases and that the raiyat should at time of the registration of his kuboolyuts have the opportunity to contest his liability under the contract which he has already signed.

Chapter IX of Bill—Management of Joint Estates.

I gather from paragraph 97 of the Statement of Objects and Reasons appended to the original Bill introduced in Council, and from the extracts referred to therein, that there exists an impression that the provisions for the appointment of managers for joint owners are much needed; and that the proposed legislation in that respect is necessitated by the repeal, in 1874, of certain portions of Regulation V of 1827, which has made the present law, Regulation V of 1812, Section 26, unworkable. The old Regulations gave the power to the Government to appoint managers for properties, where there are joint proprietors, and where the conduct of these joint proprietors caused an apprehension of a breach of the peace. These Regulations, however, were passed long before the enactment of the Criminal Procedure Code, according to which a breach of the peace was made a grave criminal offence. It was therefore found no longer necessary to make breach of the peace a civil as well as a criminal offence. The repeal of these Regulations in 1874 was therefore on the footing of obsolete enactments, and, consequently, there is every reason, before reviving such procedure, to enquire how far the Regulations of 1812 and 1827 were actually resorted to by public officers or private complainants, and with what success. I put a definite question to this effect in Committee, but the only reply I obtained was that the information would be looked after; and to this day I have heard no more about it. In my humble opinion when such a law has solemnly been repealed as obsolete, the proposal for its revival ought to be preceded by the collection and publication of statistics. Neither theories nor mere general impressions should precede proposals for legislation. Facts, well established and clearly arranged, can alone justify them.

I cannot leave this subject without remarking that with the progress of education and the spread of levelling ideas a purely patriarchal form of Government is no longer needed for the benefit of the raiyats. If these provisions therefore are to be re-introduced, the proprietors of estates and tenures, and even the novel tenure-holders created by this Bill, could but view with dislike the proposal which leaves the entire management of their properties in the hands of the District Judge *without any right of appeal*. Is there less chance of a Judge giving a wrong decision in such cases that his order in them is to be final, or is the possible enquiry which may be caused by his order likely to be less than in the many other cases which as Judge he has to decide, but in which the law refuses finality to his judgment, and provides for an appeal to the High Court?

While on this subject, I might mention that I proposed certain restrictions to be put on the management charges and the powers of the managers; I further proposed that the management charges should, on no account, be more than 12 per cent. of the gross income of the estate; and that in making this suggestion I was justified by the fact that in some cases the management charges under Government in the Court of Wards has exceeded even 20 per cent. of the gross income.

"The rate varied from division to division, having been as high as 25 per cent. in Rajshahye and Cooch Behar (where a thorough reorganisation of the system of management is urgently called for, and is now in progress), and as low as 5·1 per cent. in Orissa."—(Administration Report of Bengal, 1879-80, pages 44 and 45.)

Besides this, I made a proposal to the effect that no managers should be appointed on the ground of breach of the peace, unless all or at least one of the proprietors apply for a manager. I made this proposal, as I thought that unless we put some restrictions of this sort we are bound to see all the raiyats apply for joint-managers in all 'ijmali' estates and in all cases where they have instituted criminal proceedings for breach of the peace, simply to annoy the zamíndárs, and have failed. The Criminal Codes can more effectually treat this question than Civil Courts, as the powers vested in the Criminal Courts for the prevention of breaches of the peace are much more effective than those with which the Civil Courts are now proposed to be vested.

There was a third proposal which I made to the Select Committee, which was, that the managers should on no account be allowed to have the power of lowering rents without the consent of all the joint proprietors. I naturally think (and I moreover believe that everybody who has studied the subject at all carefully, or has any experience in the management of landed estates, and is besides not committed to official opinions on the subject, will agree with me in thinking) that the manager, who after all has only a temporary interest in the village, and who is supervised by a Government officer, whose other duties do

not allow of his giving sufficient time to such supervision, would, according to the proposed Bill, have splendid opportunities of robbing the zamíndárs of their yearly income by reducing the rents of the raiyats, and filling his own pocket by taking a commission from the said raiyats as bribe for such reduction. What is the class from which the Government can, in such cases, recruit their staff of managers? Looking to the pay of such appointments it can only be much the same class from which they now recruit their Ameens and Police Inspectors, who, as is notorious, are one of the greatest curses of the country. The Government cannot possibly hope to recruit their managers from the higher class of native gentry, on account of the small salaries such appointments are likely to command. The incomes of the ordinary joint proprietors are, as a rule, very small; and moreover in these days of heavy criminal penalties for "breaches of the peace" it is not likely that Government will be able to appoint one manager for a large number of estates, and so, by ensuring his getting a sufficiently large amount of monthly salary, secure the appointment of a trustworthy man.

To all the proposals about restrictions on the power of the managers, and the expenses of their establishment (which, in the opinions of the zamíndárs I have consulted, seems strictly necessary) I got the answer in Select Committee that the High Court are to be asked to frame rules. But we, the zamíndárs, maintain that the functions of the managers should not be left undefined, but that the legislature should clearly define them. If it is really thought that the High Court knows more of this subject than the Legislative Council, then why is it that the High Court was not consulted on the very much more important questions concerning the legal rights of zamíndárs guaranteed to them by the Permanent Settlement?

Chapter XII of Bill—Record of Rights.

It has been alleged that in some estates the zamíndárs do not keep up any proper records. If so, then in such zamíndárí survey and proper record of rights might be necessary; but this is no reason why in those estates where the records are perfect and where those concerned are contented with the records they have got, the raiyat and the zamíndár should be put to the trouble of a survey.

All the zamíndárs measure their estates periodically according to the old system of measurement, and they have all some sort of rough measurement papers, and there are some who even go beyond this and have their estates not only measured but mapped out very much in the same way as is done in the estates of the Government. Their papers show the exact area and position of the raiyats' holdings, as well as the quality of the land and rates of rent payable.

There are a few zamíndárs who go even beyond this and induce all their raiyats to sign the record book after fully explaining to each of them the particulars of his field, &c. This is no easy task for the zamíndár. He has not like the Settlement Officer of the Government in its khass mehals the power to compel the attendance of the raiyats, hence he has to incur a great deal of expense and the consequent trouble is immense.

Under these circumstances can it be said that it is necessary to have a general survey, at least those zamíndárís where the records are perfect should, I think, be exempted.

I propose that if there is to be a survey it should be taken in hand in only those villages where the raiyats or zamíndárs wish it, as I do not see the justice of saddling them with the expenses of a survey which they do not wish for, and which instead of doing good is calculated to give rise to endless litigation.

In 1876 a law was passed compelling the zamíndárs to register their rights. We all know the amount of litigation this gave rise to. People who had no claims whatever came forward in the hope of getting some sort of claim recognised, and the result is that though eight years have elapsed since this Act was passed, many of the cases under it are still undecided and many of the landlords who really have the best possible title to their properties, in addition to the attendant anxiety, have been unnecessarily put to a great deal of expense.

So much for the record of the rights of the zamíndárs who do not represent even one per cent. of the population.

If the period of eight years has been found insufficient to record the rights of such a small class of the people, will it not take ten times as long to record the rights of the tenants who represent nearly the whole population of Bengal and Bíhár, and will not the litigation expense, worry, and agitation during this long period consequent on the necessary enquiries be injurious to all classes?

These are reasons which lead me to think that it is unnecessary to introduce the survey in any village except where those concerned request the Government to do it.

Record of Zamíndárs—Khamar or private lands.

This subject has been dealt with so very ably in the dissent by my hon'ble colleague Rai Kristo Dás Pál Bahádár that I need not add anything more than that I fully agree with all he has said about it.

Chapter XIII of Bill—Distraint and Realization of Rents.

It has been admitted on all sides that the zamíndárs need some more speedy and certain means for realization of rent than they now enjoy, and that the present law is quite inoperative in those cases where all the tenants combine not to pay rents. Such a high authority as Sir James Caird recognises the difficulties of the zamíndárs in those estates where the "no rent" cry is once raised, and even in the Bengal Government's memorandum of January last, this difficulty is in a way admitted.

We zamíndárs had therefore naturally hoped that with this object we would be given some increased facilities for realization of rent. In this, however, we have been greatly disappointed, and this Bill, if passed as it now stands, would leave us in this respect in a worse position than we now are, as instead of providing a summary and inexpensive method for the collection of our legal rents, it practically does away with distraint, the one only sure, equitable, and inexpensive process now allowed to us.

The present law provides that in those cases where the raiyats fall into arrears the zamíndár can by his own agency serve them with notices stating the particulars of their arrears and then at once distrain their crops. This is the only system possible in those parts of the country that lie on the frontier where a large portion of the tenants are not even British subjects, and therefore able to evade the jurisdiction of the British Civil Courts, and also in those vast tracts like the Cosi dearah in the Purneah District which are inhabited by a semi-nomadic class of tenants who seldom stop in the same locality for more than one harvest.

Even a day's delay in such cases is fatal. The crops, if the raiyats refuse to pay their rent, must be distrained as soon as they are ripe, and the raiyats should not have sufficient time to cut them without paying in their rents, as they leave the village for good directly they have gathered the harvest.

The Bill, however, proposes that in future the landlords must in every such case apply to the Civil Court, and that the crops should be only attached through that Court, thereby giving to the raiyat ample time to cut and carry off his crop before the Court officers can reach the spot to distrain it. Such a procedure not only throws extra and new costs on the zamíndár on account of Court-fees and legal agency which must be employed, but it will result in the landlord having no power whatever to realise his rents from those semi-nomadic raiyats who leave the village directly after they have cut their crops. His only remedy will now lie in a civil suit against a raiyat of whose whereabouts even he may be ignorant, and to execute a decree against whom, if he succeeds in obtaining one, will be almost impossible.

I would specially record that it appears to me to be very strange that a Bill, one of the avowed objects of which was to give to landlords what is admittedly so necessary, *viz.*, some increased facilities for the realisation of their rents, should leave the hands of the Select Committee in such a form that

instead of doing this, it intensifies their present difficulties and deprives them of the little relief they now enjoy.

It is the proprietors who are responsible for payment of their share of the Government revenue, which they have to collect from their raiyats, and it is not the Government revenue only that they have to realise; they have also of late been made to collect from their raiyats their share of certain Government cesses, and if by sunset of the day fixed for payment of the Government revenue they have not paid in their Government dues, they are liable to be summarily sold up, and turned out of their properties, and yet they are not to be given any means by which they can ensure their raiyats paying to them what they are bound under such a heavy penalty to pay in to the Government to a day.

The practical working of the law as it now stands is this, that a proprietor may be sold up and ejected from his ancestral property owing to no fault of his own but to his inability to recover his legal rents from his raiyats, an inability due to a defect in our existing laws, a defect which, as I above show, the proposed Bill aggravates.

I do not for a moment wish to dispute the justice or necessity of the law that makes it possible for large estates to be sold up for trifling arrears of Government revenue, but what I do wish to point out is that it seems to zamíndárs a want of justice on the part of Government to reserve to itself this power of summary sale while it refuses any summary powers to the landlord for the collection of his rents from his raiyats.

The Government itself recognizes the inutility of trusting to the Civil Courts only for the realization of rents, by having peculiar laws of its own in its own estates or "Khas Mehals" and if necessary for Government, surely such rules are equally so for us. I do most earnestly hope that this matter will be seriously looked into before any final conclusion on it is arrived at, as it is one which gravely affects the majority of the Bihar zamíndárs.

Chapter XVII—Freedom of Contract.

I wish to enter my strong protest against the abolition of freedom of contract between zamíndárs and their raiyats and to the contemplated annulment of contract now existing, and entered into in confidence of the good faith of Government, by whom such contracts were specially legalised and thereby encouraged.

I would urge that no evidence has been shown of the alleged evils arising out of these contracts, or that zamíndárs have by an improper use of them, injured an unsuspecting peasantry; and that until the most conclusive proof can be given that such evils have become common, no such violent breach of existing arrangement fairly arrived at by mutual consent and sanctioned by Government should be allowed.

The proposed legislation on this point seems to start with the assumption that all contracts between a zamíndár and raiyat must be prejudicial to the latter, an assumption utterly incorrect, as there are many cases in which a contract is directly to the advantage of the raiyat who benefits by complying with his landlord's wishes, to such contracts there could be no possible objection, and yet these also will now be barred.

Finally, I would desire to record, that I object strongly to the conclusions of this Select Committee, because I am of opinion that in such a momentous question, we have not had any sufficient data from which to form a fair judgment.

We should have had clear evidence given to us of the existence of those alleged causes, which not only necessitate so extreme a measure as a breach of Government guarantee and infringement of a proprietary right, but which call for a law avowedly so imperfect that the legal member of Government in introducing it has to admit that it is in itself likely to cause the extinction of the present class of cultivators for whose benefit it is specially passed; and to create in a few years a new class of cultivators unprotected by any law, and to leave the then Government of India to plunge the country once more into agitation and trouble in attempting to remedy the evils created by this Bill.

I would urge, that if a Bill is now necessary to define and regulate the relations of landlord and tenant, it should be conceived in such a spirit and so framed that instead of creating future difficulties, it should set this subject at rest for ever.

I am also of opinion, that it was impossible to give the proposed Bill proper consideration in Select Committee without evidence being taken on most of its points; and that this not having been done and proper statistical information not having been given to and tested by us, our deliberations were unsatisfactory, and that the results arrived at are based on very insufficient data.

DÁRBHANGÁ.

1st April 1884.

Translation of the Firman.

Seal

Be it known to all the amils of the present and future and to the jágírdárs, karorious officers and Nazims of Sooba Bíhár, that in accordance with the order of the Emperor who is universally obeyed, the long-standing zámíndárí of Pargana Dharmpur in Sirkar Monghyr and Dehat Pargana of Sirkar Tirhut belonging to the said Sooba Bíhár, has been confirmed to Rája Madho Singh with appertaining rights, *viz.*, inam rasooms, &c. It is necessary that the officers and karpardazes of the Nizamat should recognize the aforesaid Rája (whose zámíndárí having descended to him by succession is declared as such) to be the permanent zámíndár (subject to loyalty), keep him in possession of the zámíndárí rights, cause his all demands to be paid up, act according to his advice if the same be loyal and tending to benefit the raiyats. Further also, act in accordance with this Firman, which is high in dignity, they should strictly act up to the orders contained in the above Firman and refrain from calling upon the production of the renewed sanad annually.

Dated the 29th Shawal of the 42nd year of accession.

D. FITZPATRICK,

Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, JUNE 21, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th June, 1884, and was referred to a Select Committee:—

No. 4 OF 1884.

THE RANGOON WATER-WORKS BILL, 1884.

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A Bill to confer powers and impose duties on the Municipal Committee for the Town of Rangoon in respect to the construction and maintenance of Water-works and the supply of water in that Town.

WHEREAS a scheme has been settled and to some extent carried out for the construction and maintenance of water-works and the supply of water to the Town of Rangoon by the Municipal Committee for that town;

And whereas it is necessary for the purposes of the scheme that the Royal Lake at Rangoon, and all existing tanks, cisterns, springs, wells, pumps, reservoirs, conduits, aqueducts and works, and all land, bridges, buildings, engines, works, materials and things connected therewith or appertaining thereto, should vest in, and be under the control of, the Municipal Committee for that town;

And whereas it is expedient that powers should be conferred and duties imposed upon the said Municipal Committee with respect to the construction and maintenance of the proposed water-works and the supply of water to the Town of Rangoon, and otherwise in relation thereto, and that all acts already done by the said Municipal Committee which could have been lawfully done if this Act had been in force should be validated;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. *(1)* This Act may be called the Rangoon Water-works Act, 1884; and

Short title and commencement.

(2) It shall come into force on the first day of January, 1885.

(3) But all acts done before that date which could have been lawfully done if this Act had been in force shall be deemed to have been lawfully done.

2. On and from the day on which this Act comes into force, the following amendments shall be made in the British Burma Municipal Act, 1874, section 13, namely:— VII of 1874.

Amendment of section 13 of the British Burma Municipal Act, 1874.

(*a*) the second paragraph shall be repealed; and

(*b*) in the 3rd paragraph, for the words "either of the rates" the words "the rate," and in the fourth paragraph, for the words "every rate" the words "the rate," shall be substituted.

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

Definitions.

(1) "town" means the local area for the time being comprised within the municipal limits of the Town of Rangoon, and includes the cantonment of Rangoon and the Central Jail:

(2) "public street" means any street, road, thoroughfare, passage or place over which the public have a right of way; and includes the surface-soil and sub-soil of any such street, and the footway and drains of any such street, and any bridge, culvert or causeway forming part of any such street: [Cf. Ben. Act IV of 1876, s. 3, & Act XXII of 1883, s. 2.]

(3) "owner" includes— [Cf. Ben. Act IV of 1876, s. 3.]

(*a*) the person who is for the time being entitled to the rent of the house or land in respect of which the word is used and who is not liable to pay rent for that house or land to any other person;

(*b*) an agent of that person; and

(*c*) a trustee for that person:

(4) "house" includes schools; also factories and other buildings in which persons are employed: [38 & 39 Vic., c. 55, s. 4.]

(5) "water-works" includes all lakes, streams, tanks, cisterns, springs, wells, pumps, reservoirs, conduits, aqueducts and works, and all land, bridges, buildings, engines, works, materials and things for supplying, or used for supplying, water under this Act to the Town of Rangoon: [Cf. 38 & 39 Vic., c. 55, s. 4.]

(6) "the Committee" means the Municipal Committee for the Town of Rangoon for the time being constituted under the British Burma Municipal Act, 1874: VII of 1874.

(7) "water-rent" includes any rent, reward or payment to be made to the Committee in connection with the supply of water under this Act, but does not include the rate leviable under Chapter V: and

Rangoon Water-works Bill.
(Chapter II.—Vesting of Property. Sec. 4.)
(Chapter III.—Construction and Maintenance of Water-works. Secs. 5—8.)
(Chapter IV.—Supply of Water. Secs. 9—11.)

(8) a "supply of water for domestic purposes" does not include a supply of water for cattle, or for horses, or for washing carriages, where the cattle, horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade, manufacture or business, or for watering gardens, or for fountains or for any ornamental purpose. [26 & 27 Vic., c. 93, s. 12: Ben. Act IV of 1876, s. 130.]

CHAPTER II.

VESTING OF PROPERTY.

4. There shall vest in, and be under the control of, the Committee, freed and discharged of and from all manner of rights, titles, privileges or claims whatsoever of any other person,—

Vesting of Royal Lake and cisterns, &c., in Committee.

(*a*) the Royal Lake at Rangoon and all the land adjacent thereto and included within the limits delineated in a plan deposited in the office of the Secretary to the Chief Commissioner and authenticated by the signature of the Chief Commissioner and marked A; and [Cf. Bom. Act III of 1872, s. 64.]

(*b*) all existing tanks, cisterns, springs, wells, pumps, reservoirs, conduits, aqueducts and works, used or intended to be used for supplying water to the public in the town, and all land, bridges, buildings, engines, works, materials and things connected therewith, or appertaining thereto: [Cf. Ben. Act IV of 1876, s. 158.] [See also 38 & 39 Vic., c. 55, s. 64.]

Provided as follows:—

(1) **Any person may at any time, subject to such rules as the Committee make in this behalf, row, sail or fish on or in the waters of the Royal Lake:**

(2) Nothing in this section shall affect the land adjacent to the Royal Lake and known as the Dalhousie Park, but that land shall be preserved as a public park for the use of the public.

CHAPTER III.

CONSTRUCTION AND MAINTENANCE OF WATER-WORKS.

5. Subject to rules to be made under this Act by the Chief Commissioner, the Committee shall cause such mains and pipes to be laid, and such water-works to be constructed, as may be necessary for the supply of pure and wholesome water sufficient for the use of the inhabitants for domestic purposes in all parts of the town: [Cf. 10 Vic., c. 17, s. 35.] [Ben. Act IV of 1876, s. 129.]

Duty of Committee to construct works for supply of water.

Provided that the Chief Commissioner may, by order in writing, from time to time exempt any part of the town from the provisions of this section, and cancel any such exemption.

6. The Committee shall cause such stand-pipes or pumps to be erected at such intervals, as the Chief Commissioner, by rules made under this Act, prescribes, in all the chief public streets in those parts of the town in which mains or pipes have been laid under the last foregoing section. [Cf. Ben. Act IV of 1876, s. 129.]

Duty of Committee to erect stand-pipes.

7. The Committee may, for the purpose of constructing or maintaining any water-works for the supply of water to the town, enter upon any land and take levels of the same, and set out such parts thereof as they think necessary, and dig and break up the soil of the land:

Power for Committee to execute works.

Provided that, in the exercise of these powers, the Committee shall do as little damage as may be, and shall make full compensation to all persons interested for all damage sustained by them through the exercise of these powers, 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. X of 1870.

8. The Committee may open and break up the soil and pavement of the public streets, and lay down and place pipes, conduits, and other works and engines, and, from time to time, repair, alter or remove the same, and do all other acts which the Committee, from time to time, deem necessary for supplying water to the town.

Power for Committee to break up streets.

CHAPTER IV.

SUPPLY OF WATER.

A.—Supply of water for domestic purposes to Occupiers of Houses or Lands.

9. *(1)* Every occupier of a house or land situate in a part of the town not exempted under the proviso to section 5 shall be entitled to have free of further charge, through the communication-pipes constructed as hereinafter provided, a supply to the house or land of *fifteen hundred gallons* of pure and wholesome water for domestic purposes for every *rupee* paid to the Committee as hereinafter provided for water-rate on account of the house or land. [Ben. Act V of 1876, s. 133.]

Right of occupier to certain supply of water for domestic purposes.

(2) If the Committee have reason to believe that the occupier of any house or land consumes more water than he is entitled to have free of further charge under this section, they may provide a water-metre at their own expense, and attach it to such part of the communication-pipes as they think fit.

(3) If the occupier consumes any water over and above the quantity to which he is entitled free of further charge under this section, he shall pay for it at the rate of *one rupee* for every *fifteen hundred gallons, or part of fifteen hundred gallons.*

10. Every occupier of a house or land who is entitled to a supply of water free of further charge under the last foregoing section shall, subject to the following provisions, be entitled to have communication-pipes laid down from the service-pipes of the Committee, for bringing into his house or land a reasonable supply of water: [Ben. Act IV of 1876, s. 136.]

Right of occupier paying water-rate to bring water into his house or land.

Provided that the Committee may cut off the supply of water to any house or land while the house or land is unoccupied.

11. The communication-pipes leading the water from the service-pipes of the Committee into the house or land of any occupier, and the pipes and works within the house connected therewith, shall be of such character, dimensions and material as the Committee fix and approve, and shall be constructed at the expense of the person requiring them.

Construction of communication-pipes.

Rangoon Water-works Bill.
(Chapter V.—Water-rates and Water-rents. Sec. 21.)

[Ben. Act IV of 1876, s. 146.]

Inspection of works, pipes and fittings before connection with service-pipes.

12. *(1)* Before a connection for the supply of water from the service-pipes of the Committee to any house or land is sanctioned by the Committee, the Committee shall cause all the works, pipes and fittings within the house or land to be inspected by such officer as the Committee appoint in this behalf.

(2) The cost of an inspection under this section shall be payable in advance by the person applying for the connection, at such rate as the Committee, at a special meeting, from time to time, direct.

(3) Until the officer has certified that the works, pipes and fittings have been executed and put up in a satisfactory manner, a connection with the Committee's service-pipes shall not be permitted.

[Ben. Act IV of 1876, s. 471.]

Connection with service-pipes to be executed only by an officer of the Committee.

13. *(1)* The connection with the service-pipes of the Committee, and the laying of communication-pipes under any public street, shall be executed by an officer of the Committee authorized in that behalf.

(2) The expense of making the connection shall be payable in advance by the person applying for the same, at such rates as the Committee, at a special meeting, from time to time, direct.

[Ben. Act IV of 1878, s. 138.]

Power for officer of Committee to enter premises.

14. *(1)* The officer authorized in that behalf by the Committee may, between the hours of seven in the forenoon and five in the afternoon, enter into or on any house or land supplied with water as aforesaid in order to examine all pipes, works and fittings connected with the supply of water, and to ascertain if there is any waste or misuse of the water.

(2) If any such officer at any such time is refused admittance into any such house or land for the purposes aforesaid, or is prevented from making such examination as aforesaid, the Committee may forthwith turn off or cut off the water from the house or land.

[Ben. Act IV of 1876, s. 139.]

Power for Committee to turn off water when pipes are out of repair.

15. If any pipes, works or fittings connected with the supply of water to any house or land are at any time found, on examination, by any officer of the Committee authorized in that behalf, to be out of repair to such an extent as to cause any waste of water, the Committee may, after the expiry of twenty-four hours from the service of notice in writing to this effect, cause the water to be turned off or cut off from the house or land, and may recover the expense incurred for turning off the water from the occupier of the house or land.

B.—Supply for gratuitous use in Stand-pipes.

Duty of Committee to supply water for gratuitous use in stand-pipes.

16. The Committee shall cause a sufficient quantity of pure and wholesome water to be supplied for the gratuitous use of the inhabitants of the town for domestic purposes in the stand-pipes to be erected by the Committee under section 6.

C.—Supply of water for extinguishing fires and cleansing streets.

[Cf. 10 Vic., c. 17, s. 38.]

Duty of Committee to fix fire-plugs in mains.

17. The Committee shall fix and renew and keep in effective order such fire-plugs in such of the mains and other pipes laid by them, and shall deposit keys of the fire-plugs at such places, as the Chief Commissioner from time to time, by rules made under this Act, directs.

[Cf. 10 Vic., c. 17, s. 37.]

Duty of Committee to supply water for cleansing sewers and drains.

18. In all the mains and pipes to which any fire-plug is fixed, the Committee shall provide and keep constantly laid on, unless prevented by unusual drought or other unavoidable accident, a sufficient supply of water for use with fire-engines, for cleansing the sewers and drains, and for cleansing and watering the streets.

D.—Supply of Water for other than domestic purposes.

[Ben. Act IV of 1876, s. 132.]

Supply for other than domestic purposes.

19. *(1)* The Committee may, from time to time, supply any person with water by measurement for other than domestic purposes, for such remuneration and on such terms and conditions as shall be agreed on between the Committee and the person:

Provided that,—

(a) notwithstanding any such agreement, a person shall not be entitled to such a supply whenever and as long as the Committee are of opinion that the supply would interfere with the proper supply of water for domestic purposes under this Act; and

(b) the Committee shall not be liable, in the absence of express stipulation under any such agreement, to any forfeiture, penalty or damages for not supplying the water if the want of the supply arises from unusual drought or other unavoidable cause or accident.

(2) When any such agreement has been entered into by the Committee with any person, the Committee may, subject to such charges or rates as may have been fixed by the Committee at a special meeting, lay down, or allow to be laid down, the necessary communication-pipes and works, of such dimensions and character as may be fixed by the Committee, for supplying the person with water in accordance with the terms of the agreement.

E.—Pressure of water supplied.

[Cf. 10 Vic., c. 17, s. 35: Ben. Act IV of 1876, s. 131.]

Pressure at which water must be kept.

20. From such a day as the Chief Commissioner, by notification in the local official Gazette, directs in this behalf, the supply of water in the mains and pipes which the Committee are required to lay under this Act shall be laid on at such pressure as the Chief Commissioner, by rules made under this Act, prescribes.

CHAPTER V.

WATER-RATES AND WATER-RENTS.

[Cf. Act VII of 1874, s. 13.]

Power for Committee to impose water-rate.

21. *(1)* To provide for the supply of water under this Act the Committee may, by a resolution passed at a special meeting and confirmed by the Chief Commissioner, impose an annual rate on all houses and lands situate in the town or any part thereof not exceeding two per centum of their annual value calculated on such principles as the Chief Commissioner, by rules made under this Act, prescribes.

Rangoon Water-works Bill.
(Chapter VI.—Reciprocal Rights of Owners and Occupiers to supply of Water to Houses. Secs. 28—30.)

(2) It shall be at the option of the Committee, when a rate under sub-section *(1)* has been imposed, to levy in lieu thereof on any house of which the annual value is less than one hundred rupees an annual rate not exceeding one pie for every three square feet of the ground covered by the house.

(3) The rate leviable under this section in respect of any house or land shall be payable by the occupier of the house or land.

[Cf. Act VII of 1874, ss. 11 and 25.]

Power to abolish or reduce tax, or exempt from taxation.

22. The Committee, by a resolution passed at a special meeting and confirmed by the Chief Commissioner, may abolish or reduce in amount any tax imposed under the last foregoing section, or exempt any house or land, or description of house or land, from the tax.

Power to Chief Commissioner to suspend levy of tax.

23. *(1)* If it at any time appears to the Chief Commissioner, on complaint made or otherwise, that the tax imposed under section 21 is unfair in its incidence, or that the levy thereof or of any part thereof is obnoxious to the interests of the general public, or that any houses or lands, or description of houses or lands, should be exempted from the payment of the same, he may require the Committee to take within a specified period measures to remove the objection, or grant the exemption, as the case may be; and if within that period the requirement is not complied with to the satisfaction of the Chief Commissioner, he may, by notification in the local official Gazette, suspend the levy of the tax or of such part thereof until the objection has been removed or the exemption granted.

(2) The Chief Commissioner may at any time, by a like notification, rescind any such suspension.

[Cf. Act VII of 1874, s. 27.]

Constitution and application of water-supply fund.

24. *(1)* A separate fund, to be called the water-supply fund, shall be established, and there shall be credited to it the existing balance (if any) of the water-rate levied under section 13 of the British Burma Municipal Act, VII of 1874. 1874, the proceeds of the rate leviable under this chapter and all water-rents.

(2) The water-supply fund shall, subject to such rules as may be made by the Chief Commissioner in this behalf, be applicable at the discretion of the Committee to the supply of water in the town and to no other purpose.

[Cf. Act VII of 1874, s. 29.]

Custody of, and disbursement from, fund.

25. *(1)* The balance standing to the credit of the water-supply fund shall be kept in the Government treasury.

(2) No payment shall be made out of the fund except under the signature of the President or Vice-president and one other member of the Committee.

[Act VII of 1874, s. 44.]

Recovery of arrears of water-rates and water-rents.

26. All arrears of water-rates or water-rents under this Act may be recovered, on application to such Revenue-officer as the Local Government may appoint in this behalf, as if they were arrears of land-revenue.

[Ben. Act VI of 1876, s. 140.]

Power for Committee to turn off water on neglect to pay the rate or charge.

27. If any person supplied with water neglects to pay—

(a) the rate leviable under this chapter, or

(b) any water-rent payable by him to the Committee,

the Committee may turn off or cut off the water from the house or land in respect of which the rate or water-rent is payable, by cutting off the pipe to the house or land, or by such other means as the Committee think fit, and may recover in manner provided by the last foregoing section the expense of turning off or cutting off the water from the person:

Provided that the stopping or cutting off the supply of water shall not relieve any person from any penalties or liabilities which he has otherwise incurred.

CHAPTER VI.

RECIPROCAL RIGHTS OF OWNERS AND OCCUPIERS TO SUPPLY OF WATER TO HOUSES.

[Ben. Act IV of 1876, s. 10.]

Power for occupier of house to require owner to provide works for water-supply.

28. *(1)* Any occupier holding direct from the owner of a house may, by notice in writing signed by him, require the owner of the house to construct all such works as may be necessary for bringing into the house a supply of water for domestic purposes.

(2) Every notice under this section shall contain an undertaking on the part of the occupier to pay interest at the rate of one per centum per mensem, calculated from the date of the completion of the works, on the cost of the works during the residue of his term of occupation.

(3) If the house, or the land attached thereto, does not abut upon a street in which there is a supply-main, the occupier shall undertake to pay the cost of connecting the house with the nearest supply-main.

[Ben. Act VI of 1876, s. 151.]

Power for occupier to make works in default of owner.

29. *(1)* If the owner does not, within three months from the service of the notice mentioned in the last foregoing section, cause such works as aforesaid to be completed, the occupier may cause the works to be completed, and may deduct the cost of the works from the rent payable by him in respect of the house:

Provided that the occupier shall not deduct from the rent on account of the cost—

(a) a sum exceeding the amount of six months rent; or

(b) where the house or the land attached thereto does not abut upon a street in which there is a supply-main, the cost of connecting the house with a supply-main.

(2) The deduction which an occupier is authorized to make under this section shall be made by six equal monthly instalments.

(3) Interest on each instalment shall be payable to the owner by the occupier at the rate of one per centum per mensem from the time when it is deducted.

[Ben. Act IV of 1876, s. 152.]

What works are sufficient for supply of water to house.

30. The works shall not be deemed sufficient for bringing into the house a supply of water for domestic purposes unless the following taps, with the necessary works in connection therewith, are provided, namely:—

(a) two taps in the house;

Rangoon Water-works Bill.
(Chapter VII.—Rules. Secs. 37—39.)

(*b*) one tap in the cook-room of, or other building attached to, the house, and

(*c*) one tap in or near the stables or other outhouses belong to the house:

Provided that, if the annual rent of the house with the buildings and land attached thereto is less than three hundred rupees, it shall be sufficient to provide one tap only, together with the necessary works in connection therewith, within the house and the buildings and land attached thereto.

[Ben. Act IV of 1876, s. 153.]

Estimate and specification of works to be sent.

31. Works for introducing a supply of water to a house shall not be commenced by the owner without sending a specification and estimate of the cost thereof to the occupier, nor by the occupier without sending such a specification and estimate to the owner.

[Ben. Act IV of 1876, s. 154.]

Power to refer to Committee.

32. If there is any difference between the owner and the occupier respecting the cost or the sufficiency of the proposed works, either the owner or the occupier may refer the difference to the Committee, and the written award of any officer authorized by the Committee in this behalf shall be final and binding on the owner and the occupier.

[Ben. Act IV of 1876, s. 155.]

Fee on reference.

33. There shall be payable by the person making a reference to the Committee under the last foregoing section a fee (not exceeding ten rupees) at the rate of two rupees for every hundred rupees of the monthly rent of the house in respect of the water-supply to which the difference has arisen.

[Ben. Act IV of 1876, s. 156.]

Duty of owner to keep works in repair.

34. *(1)* The owner of any house or land shall keep all works connected with the supply of water to the house or land in substantial repair.

(2) If the owner fails to put any such works in substantial repair after being requested by the occupier to do so, the occupier may cause the necessary repairs to be made, and may deduct the cost of the repairs from the rent payable by him in respect of the house or land.

[Ben. Act IV of 1876, s. 157.]

Power for owner to recover sums payable by occupier.

35. Any owner to whom any sum is payable under section 28 or section 29 may recover the sum from the person liable to pay it as if it were rent payable by that person for the house in respect of which the expenses have been incurred.

Saving of contracts between owners and occupiers.

36. Nothing in this chapter shall affect any contract in writing between the owner and occupier of any house or land.

CHAPTER VII.

RULES.

Power for Chief Commissioner to make rules.

37. The Chief Commissioner may, from time to time, make rules consistent with this Act—

(*a*) to prescribe the size and nature of the mains and pipes to be laid and the water-works to be constructed by the Committee for the supply of water under this Act;

(*b*) to prescribe the size and nature of standpipes or pumps to be erected by the Committee under this Act, and the intervals at which they must be erected;

(*c*) to prescribe the mains or pipes in which fire-plugs are to be fixed, and the places at which keys of the fire-plugs are to be deposited, by the Committee under this Act;

(*d*) to prescribe the pressure at which the water supplied by the Committee under this Act is to be laid on either generally or at specified times;

(*e*) to regulate the assessment and collection of the rates leviable under Chapter V, and the mode in which the proceeds of the rates are to be applied; and

(*f*) generally to define and regulate the powers and duties of the Committee under this Act.

Power for Committee to make rules.

38. *(1)* The Committee may, from time to time, at a special meeting make rules consistent with this Act—

(*a*) for regulating rowing, sailing and fishing on the Royal Lake; and

(*b*) for preventing the waste or misuse of water supplied by them, and for defining the nature of the pipes, casks, cisterns and other apparatus to be used by every person supplied by them with water.

In making a rule under this section the Committee may direct that a breach of it shall be punishable with fine which may extend to fifty rupees, and, when the breach is a continuing one, with a further fine of five rupees for every day after the first during which the breach continues.

ct VII of 74, s. 42.]

(2) If any person, having or requiring a supply of water from the Committee, fails to comply with any rules made under clause (*b*) of this section, the Committee may refuse to supply water to him, and may cut off the water supplied to him, unless and until the rules are complied with:

Provided that the stopping or cutting off the supply of water shall not relieve any person from any penalties or liabilities which he has otherwise incurred.

Procedure for making rules.

39. *(1)* The Chief Commissioner or Committee shall, before making any rules under section 37 or section 38, publish a draft of the proposed rules for the information of persons interested.

(2) The publication shall be made—

(*a*) in the case of rules under section 37, in such manner as in the opinion of the Chief Commissioner is sufficient; and

(*b*) in the case of rules under section 38, in such manner as the Chief Commissioner, by order, directs.

(3) A notice shall be published with the draft rules specifying a date at or after which the draft shall be taken into consideration.

(4) The Chief Commissioner or Committee shall, before making the rules, receive and consider any objection or suggestion which is made by any person with respect to the draft before the date so specified.

Rangoon Water-works Bill.
(Chapter VIII.—Penalties.—Secs. 41—44.)

Publication of rules.

40. Every rule made under section 37 or section 38 shall be published in the local official Gazette in English and in such other language or languages as the Chief Commissioner directs, and such publication shall be conclusive evidence that the rule has been made as required by section 39.

CHAPTER VIII.

PENALTIES.

[Cf. Ben. Act IV of 1876, s. 149.]

Penalty for obstructing, diverting or wasting water.

41. If any person unlawfully obstructs the flow of, flushes, draws off, diverts or takes, water from any water-works belonging to, or under the management or control of, the Committee, or from any water or streams by which these water-works are supplied, or wastes any water supplied to him under this Act, he shall be punished with fine which may extend to one hundred rupees.

[26 & 27 Vic., c. 93, s. 18.]

Penalty for unauthorized application of water.

42. If any person—

(*a*) uses for other than domestic purposes any water supplied under this Act for domestic purposes; or

(*b*) where water is supplied under section 19 for a specified purpose, uses that water for any other purpose,

he shall be punished with fine which may extend to fifty rupees, without prejudice to the right of the Committee to recover from him the price of the water misused.

Penalties for causing the water of the Committee to be fouled, &c.

43. *(1)* If any person— [Cf. Ben. Act IV of 1876, s. 159.]

(*a*) bathes in any water-works, or washes, throws or causes to enter therein any dog or other animal, or

(*b*) throws any rubbish, dirt, filth or other noisome thing into any water-works, or washes or cleanses therein any cloth, wool, leather or skin of any animal, or any clothes or other thing, or

(*c*) causes the water of any sink, sewer or drain, or of any steam-engine or boiler, or any other filthy water belonging to him or under his control, to turn or be brought into any water-works, or does any other act whereby the water in any water-works is fouled,

he shall, for every such offence, be punished with fine which may extend to one hundred rupees, and to ten rupees in addition for each day (if more than one) during which the offence continues.

Prosecutions.

44. Prosecutions under this Act or the rules made under this Act may be instituted by the Committee or any person authorized by them in this behalf, and not otherwise. [Act VII of 1884, s. 44.]

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill, which relates to the Rangoon water-works now in process of construction, is twofold.

2. The first is the vesting in the Municipal Committee for the Town of Rangoon of the Royal Lake at Rangoon and the water-works connected therewith. The Dalhousie Park, in which the lake is situated, was dedicated by the Marquis of Dalhousie to the use and recreation of the public. At present the public enjoy the privilege not only of boating and fishing, but also of bathing in the waters of the lake. As one of the main features of the scheme of the new water-works is that the town should be supplied with water for drinking as well as other purposes by a main led from the lake, it is essential to take steps for ensuring the purity of the water of the lake. The best means of doing this seems to be to vest the control of the lake in the Municipal Committee for the Town of Rangoon, to whom under the present scheme is assigned the duty of constructing and maintaining the new water-works. This is accordingly done by Chapter II of the Bill. In order, however, that the existing privileges of the public may not be interfered with more than is necessary to prevent any defilement of the water, the same chapter specially reserves the right of the public to row, sail or fish in or on the lake at any time, subject only to such rules as the Municipal Committee may make in this behalf. In order further to make it perfectly clear that nothing in the chapter affects the rights of the public with respect to the Dalhousie Park, a clause to this effect has been added.

3. The second object of this Bill is to confer powers and impose duties upon the Municipal Committee with respect to the construction and maintenance of the proposed water-works, and to the supply of water to the Town of Rangoon. And to this object the other provisions of the Bill are directed.

4. Chapter III deals generally with the construction and maintenance of the water-works. It imposes on the Committee a duty to construct the works necessary for supplying a sufficient quantity of pure and wholesome water for domestic purposes, and confers on them the requisite powers of entering private land and breaking up streets.

5. Chapter IV provides, first, for the supply of water for domestic purposes to occupiers of houses or lands. It declares the right of every occupier, in a part of the town in which it is the duty of the Committee to supply water, not only to a certain supply of water for domestic purposes, but also to have communication-pipes laid down for the purpose of bringing the water into his house or land. The communication-pipes must, however, be made to the satisfaction of a municipal officer, by whom also the connection with the service-pipes must be made. A municipal officer is also authorized to enter the premises at certain times and to

inspect the pipes and works connected with the supply of water; and, if the pipes and works are found to be at any time out of repair so as to cause any waste of water, the Municipal Committee are empowered, after notice, to cut off the supply of water to the house or land.

The chapter further imposes a duty on the Municipal Committee to supply a sufficient quantity of water for gratuitous use in stand-pipes.

Then the duty of the Committee to fix fire-plugs and supply water for cleansing sewers and drains is prescribed.

Next, there are provisions for the supply by measurement, under special agreement, of water for other than domestic purposes.

Lastly, there is a provision declaring that, on and after such day as the Chief Commissioner may fix, the water shall be kept at such pressure as the Chief Commissioner, by rules, prescribes. This provision cannot be put in force at once, inasmuch as the water is at present driven through the pipes by the force of gravitation only, and the pressure cannot, therefore, be artificially increased or reduced. But as it may, perhaps, be hereafter decided to provide the necessary tanks and pumping apparatus required to raise the pressure of the water, it has been thought advisable to insert a provision of this nature.

6. Chapter V deals with water-rates and water-rents. In lieu of the existing provisions on this subject contained in the British Burma Municipal Act, 1874, which are repealed by the Preliminary chapter of the Bill, this chapter empowers the Committee, with the sanction of the Chief Commissioner, to impose an annual water-rate on all houses and lands situate in the town, not exceeding two per cent. of their annual value, calculated on such principles as the Chief Commissioner by rule prescribes, and also empowers the Committee, with the like sanction, to abolish or reduce any such tax, or to exempt any houses or lands from taxation. The Chief Commissioner is authorized to suspend the levy of the tax if it appears to him that the tax is unfair in its incidence, or that the levy thereof or of any part thereof is obnoxious to the interests of the general public, or that any houses or lands should be exempted from payment of the same, and the Committee refuse to remove the objection or grant the exemption. The chapter also provides for the constitution and application of a water-supply fund, and for the recovery of arrears of water-rates and water-rents.

7. Chapter VI is concerned with the reciprocal rights of owners and occupiers in respect to the supply of water to houses. These provisions are modelled on the similar provisions in force in Calcutta, and may generally be described as empowering the occupier, after notice to and default by the owner, to construct such works as may be necessary for bringing into the house a supply of water for domestic purposes, and to deduct the cost from his rent. The occupier, however, will be required to pay, in addition to his rent, interest at the rate of one per cent. per month on the money expended by the owner on the construction of such works or recovered from him under the provisions just referred to. The other provisions of the chapter are subsidiary to the above, and among other matters provide for the reference of matters of difference between the owner and occupier to the Committee. Lastly, there is a clause saving from the chapter contracts in writing between the owners and occupiers of houses or lands.

8. Chapter VII empowers both the Chief Commissioner and the Committee to make rules for regulating subsidiary matters connected with the subject of the Bill, and prescribes the procedure for making such rules and the mode in which the rules are to be published; while Chapter VIII enacts penalties for obstructing, diverting, wasting or misusing and for fouling the water contained in the water-works, and provides for the institution of prosecutions under the Bill by the Committee.

9. Lastly, it may be noticed that, as the water-works to which the Bill relates have been to a great extent practically carried out, a clause has been inserted in the Preliminary chapter validating all acts already done which would have been lawful had the provisions of the Bill been in force.

The 11th June, 1884.

C. P. ILBERT.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th June, 1884:—

No. 5 OF 1884.

A Bill for the validation of certain licenses to solemnize Marriages granted to Ministers of Religion under Act XXV of 1864.

WHEREAS by section 4 of Act XXV of 1864 *(to provide further for the solemnization of Marriages in India of persons professing the Christian Religion)* it was enacted that, from and after the first day of July, 1864, certain Governments therein named should have authority to grant licenses to ministers of religion to solemnize marriages within the territories subject to such Governments respectively;

And whereas, in exercise of the authority so conferred, the Governments therein named granted licenses to certain ministers of religion to solemnize marriages;

And whereas Act XXV of 1864 was repealed by Act V of 1865 *(to provide for the solemnization of Marriages in India of persons professing the Christian Religion)*;

And whereas by section 9 of the latter Act it was enacted that, from and after the commencement of that Act, all marriages which should be solemnized in India otherwise than in accordance with the provisions of the fifth and sixth sections of that Act should be null and void;

And whereas by section 6 of the same Act it was enacted that marriages might be solemnized in India by (among other persons) any minister of religion who, under the provisions of that Act, had obtained a license to solemnize marriages;

And whereas Act V of 1865 was repealed by the Indian Christian Marriage Act, 1872; XV of 1872.

And whereas by section 4 of the latter Act it is enacted that every marriage between persons, one or both of whom is a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and that any such marriage solemnized otherwise than in accordance with such provisions shall be null and void;

And whereas by the next following section of the same Act it is enacted that marriages may be solemnized in India by (among other persons) any minister of religion licensed under the same Act to solemnize marriages;

And whereas neither in Act V of 1865 nor in the Indian Christian Marriage Act, 1872, was there or is there any provision either saving licenses granted under Act XXV of 1864 or permitting a marriage to be solemnized by a minister of religion who had obtained a license to solemnize marriages under Act XXV of 1864 only; XV of 1872.

And whereas certain marriages have been solemnized both while Act V of 1865 was in force and since the passing of the Indian Christian Marriage Act, 1872, by ministers of religion who had obtained licenses to solemnize marriages under Act XXV of 1864, but had never obtained licenses to solemnize marriages under Act V of 1865 or the Indian Christian Marriage Act, 1872, as the case may be, and doubts have therefore arisen as to the validity of such marriages; XV of 1872. XV of 1872.

And whereas it is expedient to remove such doubts and to declare the continued validity of licenses to solemnize marriages granted to ministers of religion under Act XXV of 1864;

It is hereby enacted as follows:—

Validation of licenses to solemnize marriages granted to ministers of religion under Act XXV of 1864.

1. A license to solemnize marriages granted to a minister of religion under Act XXV of 1864 shall be deemed, if in force on the date on which Act V of 1865 came into force, to have been, while that Act was in force, a license granted under that Act, and, if in force on the date on which the Indian Christian Marriage Act, 1872, came into force, to have been since that Act came into force, and to be, a license granted under that Act. XV of 1872.

STATEMENT OF OBJECTS AND REASONS.

BY section 4 of Act XXV of 1864 (*to provide further for the solemnization of Marriages in India of persons professing the Christian Religion*) it was enacted that, from and after the first day of July, 1864, the Governor General of India in Council, the Governors of Madras and Bombay in Council, and the Lieutenant-Governors of Bengal, the North-Western Provinces and the Panjáb should have authority to grant licenses to ministers of religion to solemnize marriages within the territories subject to such Governor General, Governors and Lieutenant-Governors respectively. In exercise of the authority conferred by this section, the Governments therein named licensed certain ministers of religion to solemnize marriages within the territories subject to them respectively. Act XXV of 1864 was repealed by Act V of 1865 (*to provide for the solemnization of Marriages in India of persons professing the Christian Religion*). The ninth section of this Act declared that, from and after the commencement of that Act, all marriages which should be solemnized in India otherwise than in accordance with the provisions of the fifth and sixth sections of the Act should be null and void; and the sixth section of the Act, which specified the persons by whom marriages might be solemnized in India, only permitted a minister of religion who, under the provisions of that Act, had obtained a license to solemnize marriages. Act V of 1865 was in turn repealed by the Indian Christian Marriage Act, 1872. The fourth section of this Act declares that every marriage between persons, one or both of whom is a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and that any such marriage solemnized otherwise than in accordance with such provisions shall be void; and the following section of the Act, which specifies the persons by whom marriages may be solemnized in India, only permits a minister of religion licensed under the Act to solemnize marriages. There was no provision in Act V of 1865, and there is none in the Indian Christian Marriage Act, 1872, either saving licenses granted under Act XXV of 1864 or permitting ministers of religion licensed under that Act only to solemnize marriages.

2. It has been brought to the notice of the Government that marriages have been solemnized in India, both since the commencement of Act V of 1865 and since the passing of the Indian Christian Marriage Act, 1872, by ministers of religion who were not licensed under either of these Acts but under the Act of 1864. As it seems to the Government that the effect of section 9 of the Act of 1865 and of section 4 of the present Act is to make such marriages of doubtful validity, and as it is desirable to remove such doubts, the present Bill has been prepared. It simply declares that a license to solemnize marriages granted to a minister of religion under Act XXV of 1864 shall be deemed, if in force on the date on which Act V of 1865 came into force, to have been, while that Act was in force, a license granted under that Act, and, if in force on the date on which Act XV of 1872 came into force, to have been since that Act came into force, and to be, a license granted under that Act.

The 6th June, 1884.

C. P. ILBERT.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, JUNE 28, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th June, 1884, and was referred to a Select Committee:—

No. 4 OF 1884.

THE RANGOON WATER-WORKS BILL, 1884.

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A Bill to confer powers and impose duties on the Municipal Committee for the Town of Rangoon in respect to the construction and maintenance of Water-works and the supply of water in that Town.

WHEREAS a scheme has been settled and to some extent carried out for the construction and maintenance of water-works and the supply of water to the Town of Rangoon by the Municipal Committee for that town;

And whereas it is necessary for the purposes of the scheme that the Royal Lake at Rangoon, and all existing tanks, cisterns, springs, wells, pumps, reservoirs, conduits, aqueducts and works, and all land, bridges, buildings, engines, works, materials and things connected therewith or appertaining thereto, should vest in, and be under the control of, the Municipal Committee for that town;

And whereas it is expedient that powers should be conferred and duties imposed upon the said Municipal Committee with respect to the construction and maintenance of the proposed water-works and the supply of water to the Town of Rangoon, and otherwise in relation thereto, and that all acts already done by the said Municipal Committee which could have been lawfully done if this Act had been in force should be validated;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. *(1)* This Act may be called the Rangoon Water-works Act, 1884; and

Short title and commencement.

(2) It shall come into force on the first day of January, 1885.

(3) But all acts done before that date which could have been lawfully done if this Act had been in force shall be deemed to have been lawfully done.

2. On and from the day on which this Act comes into force, the following amendments shall be made in the British Burma Municipal Act, 1874, section 13, namely:—

Amendment of section 13 of the British Burma Municipal Act, 1874. VII of 1874.

(*a*) the second paragraph shall be repealed; and

(*b*) in the 3rd paragraph, for the words "either of the rates" the words "the rate," and in the fourth paragraph, for the words "every rate" the words "the rate," shall be substituted.

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

Definitions.

(1) "town" means the local area for the time being comprised within the municipal limits of the Town of Rangoon, and includes the cantonment of Rangoon and the Central Jail:

(2) "public street" means any street, road, thoroughfare, passage or place over which the public have a right of way; and includes the surface-soil and sub-soil of any such street, and the footway and drains of any such street, and any bridge, culvert or causeway forming part of any such street: [Cf. Ben. Act IV of 1876, s. 3, & Act XXII of 1883, s. 2.]

(3) "owner" includes— [Cf. Ben. Act IV of 1876, s. 3.]

(*a*) the person who is for the time being entitled to the rent of the house or land in respect of which the word is used and who is not liable to pay rent for that house or land to any other person;

(*b*) an agent of that person; and

(*c*) a trustee for that person:

(4) "house" includes schools; also factories and other buildings in which persons are employed: [38 & 39 Vic., c. 55, s. 4.]

(5) "water-works" includes all lakes, streams, tanks, cisterns, springs, wells, pumps, reservoirs, conduits, aqueducts and works, and all land, bridges, buildings, engines, works, materials and things for supplying, or used for supplying, water under this Act to the Town of Rangoon: [Cf. 38 & 39 Vic., c. 55, s. 4.]

(6) "the Committee" means the Municipal Committee for the Town of Rangoon for the time being constituted under the British Burma Municipal Act, 1874: VII of 1874.

(7) "water-rent" includes any rent, reward or payment to be made to the Committee in connection with the supply of water under this Act, but does not include the rate leviable under Chapter V: and

Rangoon Water-works Bill.
(Chapter II.—Vesting of Property. Sec. 4.)
(Chapter III.—Construction and Maintenance of Water-works. Secs. 5—8.)
(Chapter IV.—Supply of Water. Secs. 9—11.)

[26 & 27 Vic., c. 93, s. 12: Ben. Act IV of 1876, s. 130.]

(8) a "supply of water for domestic purposes" does not include a supply of water for cattle, or for horses, or for washing carriages, where the cattle, horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade, manufacture or business, or for watering gardens, or for fountains or for any ornamental purpose.

CHAPTER II.

VESTING OF PROPERTY.

4. There shall vest in, and be under the control of, the Committee, freed and discharged of and from all manner of rights, titles, privileges or claims whatsoever of any other person,—

Vesting of Royal Lake and cisterns, &c., in Committee.

[Cf. Bom. Act III of 1872, s. 64.]

(*a*) the Royal Lake at Rangoon and all the land adjacent thereto and included within the limits delineated in a plan deposited in the office of the Secretary to the Chief Commissioner and authenticated by the signature of the Chief Commissioner and marked A; and

[Cf. Ben. Act IV of 1876, s. 158.] [See also 38 & 39 Vic., c. 55, s. 64.]

(*b*) all existing tanks, cisterns, springs, wells, pumps, reservoirs, conduits, aqueducts and works, used or intended to be used for supplying water to the public in the town, and all land, bridges, buildings, engines, works, materials and things connected therewith, or appertaining thereto:

Provided as follows:—

(1) Any person may at any time, subject to such rules as the Committee make in this behalf, row, sail or fish on or in the waters of the Royal Lake:

(2) Nothing in this section shall affect the land adjacent to the Royal Lake and known as the Dalhousie Park, but that land shall be preserved as a public park for the use of the public.

CHAPTER III.

CONSTRUCTION AND MAINTENANCE OF WATER-WORKS.

[Cf. 10 Vic., c. 17, s. 35.] [Ben. Act IV of 1876, s. 129.]

5. Subject to rules to be made under this Act by the Chief Commissioner, the Committee shall cause such mains and pipes to be laid, and such water-works to be constructed, as may be necessary for the supply of pure and wholesome water sufficient for the use of the inhabitants for domestic purposes in all parts of the town:

Duty of Committee to construct works for supply of water.

Provided that the Chief Commissioner may, by order in writing, from time to time exempt any part of the town from the provisions of this section, and cancel any such exemption.

[Cf. Ben. Act IV of 1876, s. 129.]

6. The Committee shall cause such stand-pipes or pumps to be erected at such intervals, as the Chief Commissioner, by rules made under this Act, prescribes, in all the chief public streets in those parts of the town in which mains or pipes have been laid under the last foregoing section.

Duty of Committee to erect stand-pipes.

7. The Committee may, for the purpose of constructing or maintaining any water-works for the supply of water to the town, enter upon any land and take levels of the same, and set out such parts thereof as they think necessary, and dig and break up the soil of the land:

Power for Committee to execute works.

Provided that, in the exercise of these powers, the Committee shall do as little damage as may be, and shall make full compensation to all persons interested for all damage sustained by them through the exercise of these powers, 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. X of 1870.

8. The Committee may open and break up the soil and pavement of the public streets, and lay down and place pipes, conduits, and other works and engines, and, from time to time, repair, alter or remove the same, and do all other acts which the Committee, from time to time, deem necessary for supplying water to the town.

Power for Committee to break up streets.

CHAPTER IV.

SUPPLY OF WATER.

A.—Supply of water for domestic purposes to Occupiers of Houses or Lands.

9. *(1)* Every occupier of a house or land situate in a part of the town not exempted under the proviso to section 5 shall be entitled to have free of further charge, through the communication-pipes constructed as hereinafter provided, a supply to the house or land of *fifteen hundred gallons* of pure and wholesome water for domestic purposes for every *rupee* paid to the Committee as hereinafter provided for water-rate on account of the house or land. [Ben. Act V of 1876, s. 133.]

Right of occupier to certain supply of water for domestic purposes.

(2) If the Committee have reason to believe that the occupier of any house or land consumes more water than he is entitled to have free of further charge under this section, they may provide a water-metre at their own expense, and attach it to such part of the communication-pipes as they think fit.

(3) If the occupier consumes any water over and above the quantity to which he is entitled free of further charge under this section, he shall pay for it at the rate of *one rupee* for every *fifteen hundred gallons, or part of fifteen hundred gallons.*

10. Every occupier of a house or land who is entitled to a supply of water free of further charge under the last foregoing section shall, subject to the following provisions, be entitled to have communication-pipes laid down from the service-pipes of the Committee, for bringing into his house or land a reasonable supply of water: [Ben. Act IV of 1876, s. 129.]

Right of occupier paying water-rate to bring water into his house or land.

Provided that the Committee may cut off the supply of water to any house or land while the house or land is unoccupied.

11. The communication-pipes leading the water from the service-pipes of the Committee into the house or land of any occupier, and the pipes and works within the house connected therewith, shall be of such character, dimensions and material as the Committee fix and approve, and shall be constructed at the expense of the person requiring them.

Construction of communication-pipes.

Rangoon Water-works Bill.
(Chapter V.—Water-rates and Water-rents. Sec. 21.)

[Ben. Act IV of 1876, s. 146.]

12. *(1)* Before a connection for the supply of water from the service-pipes of the Committee to any house or land is sanctioned by the Committee, the Committee shall cause all the works, pipes and fittings within the house or land to be inspected by such officer as the Committee appoint in this behalf.

Inspection of works, pipes and fittings before connection with service-pipes.

(2) The cost of an inspection under this section shall be payable in advance by the person applying for the connection, at such rate as the Committee, at a special meeting, from time to time, direct.

(3) Until the officer has certified that the works, pipes and fittings have been executed and put up in a satisfactory manner, a connection with the Committee's service-pipes shall not be permitted.

[Ben. Act IV of 1876, s. 471.]

13. *(1)* The connection with the service-pipes of the Committee, and the laying of communication-pipes under any public street, shall be executed by an officer of the Committee authorized in that behalf.

Connection with service-pipes to be executed only by an officer of the Committee.

(2) The expense of making the connection shall be payable in advance by the person applying for the same, at such rates as the Committee, at a special meeting, from time to time, direct.

[Ben. Act IV of 1876, s. 138.]

14. *(1)* The officer authorized in that behalf by the Committee may, between the hours of seven in the forenoon and five in the afternoon, enter into or on any house or land supplied with water as aforesaid in order to examine all pipes, works and fittings connected with the supply of water, and to ascertain if there is any waste or misuse of the water.

Power for officer of Committee to enter premises.

(2) If any such officer at any such time is refused admittance into any such house or land for the purposes aforesaid, or is prevented from making such examination as aforesaid, the Committee may forthwith turn off or cut off the water from the house or land.

[Ben. Act IV of 1876, s. 139.]

15. If any pipes, works or fittings connected with the supply of water to any house or land are at any time found, on examination, by any officer of the Committee authorized in that behalf, to be out of repair to such an extent as to cause any waste of water, the Committee may, after the expiry of twenty-four hours from the service of notice in writing to this effect, cause the water to be turned off or cut off from the house or land, and may recover the expense incurred for turning off the water from the occupier of the house or land.

Power for Committee to turn off water when pipes are out of repair.

B.—Supply for gratuitous use in Stand-pipes.

16. The Committee shall cause a sufficient quantity of pure and wholesome water to be supplied for the gratuitous use of the inhabitants of the town for domestic purposes in the stand-pipes to be erected by the Committee under section 6.

Duty of Committee to supply water for gratuitous use in stand-pipes.

C.—Supply of water for extinguishing fires and cleansing streets.

[Cf. 10 Vic., c. 17, s. 33.]

17. The Committee shall fix and renew and keep in effective order such fire-plugs in such of the mains and other pipes laid by them, and shall deposit keys of the fire-plugs at such places, as the Chief Commissioner from time to time, by rules made under this Act, directs.

Duty of Committee to fix fire-plugs in mains.

[Cf. 10 Vic., c. 17, s. 37.]

18. In all the mains and pipes to which any fire-plug is fixed, the Committee shall provide and keep constantly laid on, unless prevented by unusual drought or other unavoidable accident, a sufficient supply of water for use with fire-engines, for cleansing the sewers and drains, and for cleansing and watering the streets.

Duty of Committee to supply water for cleansing sewers and drains.

D.—Supply of Water for other than domestic purposes.

[Ben. Act IV of 1876, s. 132.]

19. *(1)* The Committee may, from time to time, supply any person with water by measurement for other than domestic purposes, for such remuneration and on such terms and conditions as shall be agreed on between the Committee and the person:

Supply for other than domestic purposes.

Provided that,—

(a) notwithstanding any such agreement, a person shall not be entitled to such a supply whenever and as long as the Committee are of opinion that the supply would interfere with the proper supply of water for domestic purposes under this Act; and

(b) the Committee shall not be liable, in the absence of express stipulation under any such agreement, to any forfeiture, penalty or damages for not supplying the water if the want of the supply arises from unusual drought or other unavoidable cause or accident.

(2) When any such agreement has been entered into by the Committee with any person, the Committee may, subject to such charges or rates as may have been fixed by the Committee at a special meeting, lay down, or allow to be laid down, the necessary communication-pipes and works, of such dimensions and character as may be fixed by the Committee, for supplying the person with water in accordance with the terms of the agreement.

E.—Pressure of water supplied.

[Cf. 10 Vic., c. 17, s. 35; Ben. Act IV of 1876, s. 131.]

20. From such a day as the Chief Commissioner, by notification in the local official Gazette, directs in this behalf, the supply of water in the mains and pipes which the Committee are required to lay under this Act shall be laid on at such pressure as the Chief Commissioner, by rules made under this Act, prescribes.

Pressure at which water must be kept.

CHAPTER V.

WATER-RATES AND WATER-RENTS.

[Cf. Act VII of 1874, s. 13.]

21. *(1)* To provide for the supply of water under this Act the Committee may, by a resolution passed at a special meeting and confirmed by the Chief Commissioner, impose an annual rate on all houses and lands situate in the town or any part thereof not exceeding two per centum of their annual value calculated on such principles as the Chief Commissioner, by rules made under this Act, prescribes.

Power for Committee to impose water-rate.

Rangoon Water-works Bill.
(Chapter VI.—Reciprocal Rights of Owners and Occupiers to supply of Water to Houses. Secs. 28—30.)

(2) It shall be at the option of the Committee, when a rate under sub-section *(1)* has been imposed, to levy in lieu thereof on any house of which the annual value is less than one hundred rupees an annual rate not exceeding one pie for every three square feet of the ground covered by the house.

(3) The rate leviable under this section in respect of any house or land shall be payable by the occupier of the house or land.

[Cf. Act VII of 1874, ss. 11 and 25.]

22. The Committee, by a resolution passed at a special meeting and confirmed by the Chief Commissioner, may abolish or reduce in amount any tax imposed under the last foregoing section, or exempt any house or land, or description of house or land, from the tax.

Power to abolish or reduce tax, or exempt from taxation.

23. *(1)* If it at any time appears to the Chief Commissioner, on complaint made or otherwise, that the tax imposed under section 21 is unfair in its incidence, or that the levy thereof or of any part thereof is obnoxious to the interests of the general public, or that any houses or lands, or description of houses or lands, should be exempted from the payment of the same, he may require the Committee to take within a specified period measures to remove the objection, or grant the exemption, as the case may be; and if within that period the requirement is not complied with to the satisfaction of the Chief Commissioner, he may, by notification in the local official Gazette, suspend the levy of the tax or of such part thereof until the objection has been removed or the exemption granted.

Power to Chief Commissioner to suspend levy of tax.

(2) The Chief Commissioner may at any time, by a like notification, rescind any such suspension.

[Cf. Act VII of 1874, s. 27.]

24. *(1)* A separate fund, to be called the water-supply fund, shall be established, and there shall be credited to it the existing balance (if any) of the water-rate levied under section 13 of the British Burma Municipal Act, VII of 1874. 1874, the proceeds of the rate leviable under this chapter and all water-rents.

Constitution and application of water-supply fund.

(2) The water-supply fund shall, subject to such rules as may be made by the Chief Commissioner in this behalf, be applicable at the discretion of the Committee to the supply of water in the town and to no other purpose.

[Cf. Act VII of 1874, s. 29.]

25. *(1)* The balance standing to the credit of the water-supply fund shall be kept in the Government treasury.

Custody of, and disbursement from, fund.

(2) No payment shall be made out of the fund except under the signature of the President or Vice-president and one other member of the Committee.

[Act VII of 1874, s. 44.]

26. All arrears of water-rates or water-rents under this Act may be recovered, on application to such Revenue-officer as the Local Government may appoint in this behalf, as if they were arrears of land-revenue.

Recovery of arrears of water-rates and water-rents.

[Ben. Act VI of 1876, s. 140.]

27. If any person supplied with water neglects to pay—

Power for Committee to turn off water on neglect to pay the rate or charge.

(a) the rate leviable under this chapter, or

(b) any water-rent payable by him to the Committee,

the Committee may turn off or cut off the water from the house or land in respect of which the rate or water-rent is payable, by cutting off the pipe to the house or land, or by such other means as the Committee think fit, and may recover in manner provided by the last foregoing section the expense of turning off or cutting off the water from the person:

Provided that the stopping or cutting off the supply of water shall not relieve any person from any penalties or liabilities which he has otherwise incurred.

CHAPTER VI.

RECIPROCAL RIGHTS OF OWNERS AND OCCUPIERS TO SUPPLY OF WATER TO HOUSES.

[Ben. Act IV of 1876, s. 10.]

28. *(1)* Any occupier holding direct from the owner of a house may, by notice in writing signed by him, require the owner of the house to construct all such works as may be necessary for bringing into the house a supply of water for domestic purposes.

Power for occupier of house to require owner to provide works for water-supply.

(2) Every notice under this section shall contain an undertaking on the part of the occupier to pay interest at the rate of one per centum per mensem, calculated from the date of the completion of the works, on the cost of the works during the residue of his term of occupation.

(3) If the house, or the land attached thereto, does not abut upon a street in which there is a supply-main, the occupier shall undertake to pay the cost of connecting the house with the nearest supply-main.

[Ben. Act VI of 1876, s. 151.]

29. *(1)* If the owner does not, within three months from the service of the notice mentioned in the last foregoing section, cause such works as aforesaid to be completed, the occupier may cause the works to be completed, and may deduct the cost of the works from the rent payable by him in respect of the house:

Power for occupier to make works in default of owner.

Provided that the occupier shall not deduct from the rent on account of the cost—

(a) a sum exceeding the amount of six months' rent; or

(b) where the house or the land attached thereto does not abut upon a street in which there is a supply-main, the cost of connecting the house with a supply-main.

(2) The deduction which an occupier is authorized to make under this section shall be made by six equal monthly instalments.

(3) Interest on each instalment shall be payable to the owner by the occupier at the rate of one per centum per mensem from the time when it is deducted.

[Ben. Act VI of 1876, s. 152.]

30. The works shall not be deemed sufficient for bringing into the house a supply of water for domestic purposes unless the following taps, with the necessary works in connection therewith, are provided, namely:—

What works are sufficient for supply of water to house.

(a) two taps in the house;

Rangoon Water-works Bill.
(Chapter VII.—Rules. Secs. 37—39.)

(*b*) one tap in the cook-room of, or other building attached to, the house, and

(*c*) one tap in or near the stables or other outhouses belong to the house:

Provided that, if the annual rent of the house with the buildings and land attached thereto is less than three hundred rupees, it shall be sufficient to provide one tap only, together with the necessary works in connection therewith, within the house and the buildings and land attached thereto.

[Ben. Act IV of 1876, s. 153.]

Estimate and specification of works to be sent.

31. Works for introducing a supply of water to a house shall not be commenced by the owner without sending a specification and estimate of the cost thereof to the occupier, nor by the occupier without sending such a specification and estimate to the owner.

[Ben. Act IV of 1876, s. 154.]

Power to refer to Committee.

32. If there is any difference between the owner and the occupier respecting the cost or the sufficiency of the proposed works, either the owner or the occupier may refer the difference to the Committee, and the written award of any officer authorized by the Committee in this behalf shall be final and binding on the owner and the occupier.

[Ben. Act IV of 1876, s. 155.]

Fee on reference.

33. There shall be payable by the person making a reference to the Committee under the last foregoing section a fee (not exceeding ten rupees) at the rate of two rupees for every hundred rupees of the monthly rent of the house in respect of the water-supply to which the difference has arisen.

[Ben. Act IV of 1876, s. 156.]

Duty of owner to keep works in repair.

34. *(1)* The owner of any house or land shall keep all works connected with the supply of water to the house or land in substantial repair.

(2) If the owner fails to put any such works in substantial repair after being requested by the occupier to do so, the occupier may cause the necessary repairs to be made, and may deduct the cost of the repairs from the rent payable by him in respect of the house or land.

[Ben. Act IV of 1876, s. 157.]

Power for owner to recover sums payable by occupier.

35. Any owner to whom any sum is payable under section 28 or section 29 may recover the sum from the person liable to pay it as if it were rent payable by that person for the house in respect of which the expenses have been incurred.

Saving of contracts between owners and occupiers.

36. Nothing in this chapter shall affect any contract in writing between the owner and occupier of any house or land.

CHAPTER VII.

RULES.

Power for Chief Commissioner to make rules.

37. The Chief Commissioner may, from time to time, make rules consistent with this Act—

(*a*) to prescribe the size and nature of the mains and pipes to be laid and the water-works to be constructed by the Committee for the supply of water under this Act;

(*b*) to prescribe the size and nature of standpipes or pumps to be erected by the Committee under this Act, and the intervals at which they must be erected;

(*c*) to prescribe the mains or pipes in which fire-plugs are to be fixed, and the places at which keys of the fire-plugs are to be deposited, by the Committee under this Act;

(*d*) to prescribe the pressure at which the water supplied by the Committee under this Act is to be laid on either generally or at specified times;

(*e*) to regulate the assessment and collection of the rates leviable under Chapter V, and the mode in which the proceeds of the rates are to be applied; and

(*f*) generally to define and regulate the powers and duties of the Committee under this Act.

Power for Committee to make rules.

38. *(1)* The Committee may, from time to time, at a special meeting make rules consistent with this Act—

(*a*) for regulating rowing, sailing and fishing on the Royal Lake; and

(*b*) for preventing the waste or misuse of water supplied by them, and for defining the nature of the pipes, casks, cisterns and other apparatus to be used by every person supplied by them with water.

In making a rule under this section the Committee may direct that a breach of it shall be punishable with fine which may extend to fifty rupees, and, when the breach is a continuing one, with a further fine of five rupees for every day after the first during which the breach continues. [Act VII of 1884, s. 42.]

(2) If any person, having or requiring a supply of water from the Committee, fails to comply with any rules made under clause (*b*) of this section, the Committee may refuse to supply water to him, and may cut off the water supplied to him, unless and until the rules are complied with:

Provided that the stopping or cutting off the supply of water shall not relieve any person from any penalties or liabilities which he has otherwise incurred.

Procedure for making rules.

39. *(1)* The Chief Commissioner or Committee shall, before making any rules under section 37 or section 38, publish a draft of the proposed rules for the information of persons interested.

(2) The publication shall be made—

(*a*) in the case of rules under section 37, in such manner as in the opinion of the Chief Commissioner is sufficient; and

(*b*) in the case of rules under section 38, in such manner as the Chief Commissioner, by order, directs.

(3) A notice shall be published with the draft rules specifying a date at or after which the draft shall be taken into consideration.

(4) The Chief Commissioner or Committee shall, before making the rules, receive and consider any objection or suggestion which is made by any person with respect to the draft before the date so specified.

Rangoon Water-works Bill.
(Chapter VIII.—Penalties.—Secs. 41—44.)

Publication of rules.

40. Every rule made under section 37 or section 38 shall be published in the local official Gazette in English and in such other language or languages as the Chief Commissioner directs, and such publication shall be conclusive evidence that the rule has been made as required by section 39.

CHAPTER VIII.

PENALTIES.

[Cf. Ben. Act IV of 1876, s. 149.]

Penalty for obstructing, diverting or wasting water.

41. If any person unlawfully obstructs the flow of, flushes, draws off, diverts or takes, water from any water-works belonging to, or under the management or control of, the Committee, or from any water or streams by which these water-works are supplied, or wastes any water supplied to him under this Act, he shall be punished with fine which may extend to one hundred rupees.

[26 & 27 Vic., c. 93, s. 18.]

Penalty for unauthorized application of water.

42. If any person—

(*a*) uses for other than domestic purposes any water supplied under this Act for domestic purposes; or

(*b*) where water is supplied under section 19 for a specified purpose, uses that water for any other purpose,

he shall be punished with fine which may extend to fifty rupees, without prejudice to the right of the Committee to recover from him the price of the water misused.

Penalties for causing the water of the Committee to be fouled, &c.

43. *(1)* If any person— [Cf. Ben. Act IV of 1876, s. 159.]

(*a*) bathes in any water-works, or washes, throws or causes to enter therein any dog or other animal, or

(*b*) throws any rubbish, dirt, filth or other noisome thing into any water-works, or washes or cleanses therein any cloth, wool, leather or skin of any animal, or any clothes or other thing, or

(*c*) causes the water of any sink, sewer or drain, or of any steam-engine or boiler, or any other filthy water belonging to him or under his control, to turn or be brought into any water-works, or does any other act whereby the water in any water-works is fouled,

he shall, for every such offence, be punished with fine which may extend to one hundred rupees, and to ten rupees in addition for each day (if more than one) during which the offence continues.

Prosecutions.

44. Prosecutions under this Act or the rules made under this Act may be instituted by the Committee or any person authorized by them in this behalf, and not otherwise. [Act VII of 1884, s. 44.]

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill, which relates to the Rangoon water-works now in process of construction, is twofold.

2. The first is the vesting in the Municipal Committee for the Town of Rangoon of the Royal Lake at Rangoon and the water-works connected therewith. The Dalhousie Park, in which the lake is situated, was dedicated by the Marquis of Dalhousie to the use and recreation of the public. At present the public enjoy the privilege not only of boating and fishing, but also of bathing in the waters of the lake. As one of the main features of the scheme of the new water-works is that the town should be supplied with water for drinking as well as other purposes by a main led from the lake, it is essential to take steps for ensuring the purity of the water of the lake. The best means of doing this seems to be to vest the control of the lake in the Municipal Committee for the Town of Rangoon, to whom under the present scheme is assigned the duty of constructing and maintaining the new water-works. This is accordingly done by Chapter II of the Bill. In order, however, that the existing privileges of the public may not be interfered with more than is necessary to prevent any defilement of the water, the same chapter specially reserves the right of the public to row, sail or fish in or on the lake at any time, subject only to such rules as the Municipal Committee may make in this behalf. In order further to make it perfectly clear that nothing in the chapter affects the rights of the public with respect to the Dalhousie Park, a clause to this effect has been added.

3. The second object of this Bill is to confer powers and impose duties upon the Municipal Committee with respect to the construction and maintenance of the proposed water-works, and to the supply of water to the Town of Rangoon. And to this object the other provisions of the Bill are directed.

4. Chapter III deals generally with the construction and maintenance of the water-works. It imposes on the Committee a duty to construct the works necessary for supplying a sufficient quantity of pure and wholesome water for domestic purposes, and confers on them the requisite powers of entering private land and breaking up streets.

5. Chapter IV provides, first, for the supply of water for domestic purposes to occupiers of houses or lands. It declares the right of every occupier, in a part of the town in which it is the duty of the Committee to supply water, not only to a certain supply of water for domestic purposes, but also to have communication-pipes laid down for the purpose of bringing the water into his house or land. The communication-pipes must, however, be made to the satisfaction of a municipal officer, by whom also the connection with the service-pipes must be made. A municipal officer is also authorized to enter the premises at certain times and to

inspect the pipes and works connected with the supply of water; and, if the pipes and works are found to be at any time out of repair so as to cause any waste of water, the Municipal Committee are empowered, after notice, to cut off the supply of water to the house or land.

The chapter further imposes a duty on the Municipal Committee to supply a sufficient quantity of water for gratuitous use in stand-pipes.

Then the duty of the Committee to fix fire-plugs and supply water for cleansing sewers and drains is prescribed.

Next, there are provisions for the supply by measurement, under special agreement, of water for other than domestic purposes.

Lastly, there is a provision declaring that, on and after such day as the Chief Commissioner may fix, the water shall be kept at such pressure as the Chief Commissioner, by rules, prescribes. This provision cannot be put in force at once, inasmuch as the water is at present driven through the pipes by the force of gravitation only, and the pressure cannot, therefore, be artificially increased or reduced. But as it may, perhaps, be hereafter decided to provide the necessary tanks and pumping apparatus required to raise the pressure of the water, it has been thought advisable to insert a provision of this nature.

6. Chapter V deals with water-rates and water-rents. In lieu of the existing provisions on this subject contained in the British Burma Municipal Act, 1874, which are repealed by the Preliminary chapter of the Bill, this chapter empowers the Committee, with the sanction of the Chief Commissioner, to impose an annual water-rate on all houses and lands situate in the town, not exceeding two per cent. of their annual value, calculated on such principles as the Chief Commissioner by rule prescribes, and also empowers the Committee, with the like sanction, to abolish or reduce any such tax, or to exempt any houses or lands from taxation. The Chief Commissioner is authorized to suspend the levy of the tax if it appears to him that the tax is unfair in its incidence, or that the levy thereof or of any part thereof is obnoxious to the interests of the general public, or that any houses or lands should be exempted from payment of the same, and the Committee refuse to remove the objection or grant the exemption. The chapter also provides for the constitution and application of a water-supply fund, and for the recovery of arrears of water-rates and water-rents.

7. Chapter VI is concerned with the reciprocal rights of owners and occupiers in respect to the supply of water to houses. These provisions are modelled on the similar provisions in force in Calcutta, and may generally be described as empowering the occupier, after notice to and default by the owner, to construct such works as may be necessary for bringing into the house a supply of water for domestic purposes, and to deduct the cost from his rent. The occupier, however, will be required to pay, in addition to his rent, interest at the rate of one per cent. per month on the money expended by the owner on the construction of such works or recovered from him under the provisions just referred to. The other provisions of the chapter are subsidiary to the above, and among other matters provide for the reference of matters of difference between the owner and occupier to the Committee. Lastly, there is a clause saving from the chapter contracts in writing between the owners and occupiers of houses or lands.

8. Chapter VII empowers both the Chief Commissioner and the Committee to make rules for regulating subsidiary matters connected with the subject of the Bill, and prescribes the procedure for making such rules and the mode in which the rules are to be published; while Chapter VIII enacts penalties for obstructing, diverting, wasting or misusing and for fouling the water contained in the water-works, and provides for the institution of prosecutions under the Bill by the Committee.

9. Lastly, it may be noticed that, as the water-works to which the Bill relates have been to a great extent practically carried out, a clause has been inserted in the Preliminary chapter validating all acts already done which would have been lawful had the provisions of the Bill been in force.

The 11th June, 1884.

C. P. ILBERT.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th June, 1884:—

No. 5 OF 1884.

A Bill for the validation of certain licenses to solemnize Marriages granted to Ministers of Religion under Act XXV of 1864.

WHEREAS by section 4 of Act XXV of 1864 (*to provide further for the solemnization of Marriages in India of persons professing the Christian Religion*) it was enacted that, from and after the first day of July, 1864, certain Governments therein named should have authority to grant licenses to ministers of religion to solemnize marriages within the territories subject to such Governments respectively;

And whereas, in exercise of the authority so conferred, the Governments therein named granted licenses to certain ministers of religion to solemnize marriages;

And whereas Act XXV of 1864 was repealed by Act V of 1865 (*to provide for the solemnization of Marriages in India of persons professing the Christian Religion*);

And whereas by section 9 of the latter Act it was enacted that, from and after the commencement of that Act, all marriages which should be solemnized in India otherwise than in accordance with the provisions of the fifth and sixth sections of that Act should be null and void;

And whereas by section 6 of the same Act it was enacted that marriages might be solemnized in India by (among other persons) any minister of religion who, under the provisions of that Act, had obtained a license to solemnize marriages;

And whereas Act V of 1865 was repealed by the Indian Christian Marriage Act, 1872; XV of 1872.

And whereas by section 4 of the latter Act it is enacted that every marriage between persons, one or both of whom is a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and that any such marriage solemnized otherwise than in accordance with such provisions shall be null and void;

And whereas by the next following section of the same Act it is enacted that marriages may be solemnized in India by (among other persons) any minister of religion licensed under the same Act to solemnize marriages;

And whereas neither in Act V of 1865 nor in the Indian Christian Marriage Act, 1872, was there or is there any provision either saving licenses granted under Act XXV of 1864 or permitting a marriage to be solemnized by a minister of religion who had obtained a license to solemnize marriages under Act XXV of 1864 only; XV of 1872.

And whereas certain marriages have been solemnized both while Act V of 1865 was in force and since the passing of the Indian Christian Marriage Act, 1872, by ministers of religion how had obtained licenses to solemnize marriages under Act XXV of 1864, but had never obtained licenses to solemnize marriages under Act V of 1865 or the Indian Christian Marriage Act, 1872, as the case may be, and doubts have therefore arisen as to the validity of such marriages; XV of 1872. XV of 1872.

And whereas it is expedient to remove such doubts and to declare the continued validity of licenses to solemnize marriages granted to ministers of religion under Act XXV of 1864;

It is hereby enacted as follows:—

Validation of licenses to solemnize marriages granted to ministers of religion under Act XXV of 1864.

1. A license to solemnize marriages granted to a minister of religion under Act XXV of 1864 shall be deemed, if in force on the date on which Act V of 1865 came into force, to have been, while that Act was in force, a license granted under that Act, and, if in force on the date on which the Indian Christian Marriage Act, 1872, came into force, to have been since that Act came into force, and to be, a license granted under that Act. XV of 1872.

STATEMENT OF OBJECTS AND REASONS.

BY section 4 of Act XXV of 1864 (*to provide further for the solemnization of Marriages in India of persons professing the Christian Religion*) it was enacted that, from and after the first day of July, 1864, the Governor General of India in Council, the Governors of Madras and Bombay in Council, and the Lieutenant-Governors of Bengal, the North-Western Provinces and the Panjáb should have authority to grant licenses to ministers of religion to solemnize marriages within the territories subject to such Governor General, Governors and Lieutenant-Governors respectively. In exercise of the authority conferred by this section, the Governments therein named licensed certain ministers of religion to solemnize marriages within the territories subject to them respectively. Act XXV of 1864 was repealed by Act V of 1865 (*to provide for the solemnization of Marriages in India of persons professing the Christian Religion*). The ninth section of this Act declared that, from and after the commencement of that Act, all marriages which should be solemnized in India otherwise than in accordance with the provisions of the fifth and sixth sections of the Act should be null and void; and the sixth section of the Act, which specified the persons by whom marriages might be solemnized in India, only permitted a minister of religion who, under the provisions of that Act, had obtained a license to solemnize marriages. Act V of 1865 was in turn repealed by the Indian Christian Marriage Act, 1872. The fourth section of this Act declares that every marriage between persons, one or both of whom is a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and that any such marriage solemnized otherwise than in accordance with such provisions shall be void; and the following section of the Act, which specifies the persons by whom marriages may be solemnized in India, only permits a minister of religion licensed under the Act to solemnize marriages. There was no provision in Act V of 1865, and there is none in the Indian Christian Marriage Act, 1872, either saving licenses granted under Act XXV of 1864 or permitting ministers of religion licensed under that Act only to solemnize marriages.

2. It has been brought to the notice of the Government that marriages have been solemnized in India, both since the commencement of Act V of 1865 and since the passing of the Indian Christian Marriage Act, 1872, by ministers of religion who were not licensed under either of these Acts but under the Act of 1864. As it seems to the Government that the effect of section 9 of the Act of 1865 and of section 4 of the present Act is to make such marriages of doubtful validity, and as it is desirable to remove such doubts, the present Bill has been prepared. It simply declares that a license to solemnize marriages granted to a minister of religion under Act XXV of 1864 shall be deemed, if in force on the date on which Act V of 1865 came into force, to have been, while that Act was in force, a license granted under that Act, and, if in force on the date on which Act XV of 1872 came into force, to have been since that Act came into force, and to be, a license granted under that Act.

The 6th June, 1884.

C. P. ILBERT.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 25th June, 1884:—

No. 6 OF 1884.

A Bill to amend the Indian Salt Act, 1882.

WHEREAS it is expedient to exclude the Province of Sindh from the operation of those portions of the Indian Salt Act, 1882, which do not extend by their own operation to the whole of British India, and whereas it is also expedient to remove certain doubts which have been raised as to the meaning of the words "importation of salt" in section 27 of the same Act; It is hereby enacted as follows:—

XII of 1882.

Repeal of words "to the Province of Sindh" and "Province" in section 1 of Act XII of 1882.

1. From such day as the Governor of Bombay in Council, by notification in the official Gazette, fixes in this behalf, the words "to the Province of Sindh" and the word "Province," in paragraphs three and four respectively of section 1 of the Indian Salt Act, 1882, shall be repealed.

Amendment of section 27 of the same Act.

2. For the word "importation" in section 27 of the same Act, the word "bringing" shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

1. The object of this Bill is to make two amendments in the Indian Salt Act, 1882.

2. It has been found that certain provisions of the Indian Salt Act, 1882, are not suitable to the circumstances of the Province of Sindh, to which they at present extend, and it is proposed to replace them by an enactment to be passed by the local legislature providing for the requirements of the whole Presidency of Bombay inclusive of Sindh. It is doubtful, however, whether this course can be adopted until the words in section 1 of the Act which bring the Province of Sindh within the operation of those provisions have been repealed. Those words are accordingly repealed by section 1 of the Bill, and, in order that the repeal may be made to operate from the date on which the proposed new Act of the local legislature comes into force, it is left to the Governor of Bombay in Council to fix the date from which the section shall have effect.

3. The object of the amendment made by section 2 of the Bill is to remove a doubt as to the meaning of section 27 of the Act, raised by a ruling of the Judicial Commissioner in Sindh, who has held that the words "importation of salt" in that section cover only the bringing in of salt as merchandize for the purposes of commerce and in merchantable quantities. The Bill substitutes for the word "importation" the word "bringing."

The 19th June, 1884.

A. COLVIN.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, JULY 5, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th June, 1884, and was referred to a Select Committee:—

No. 4 OF 1884.

THE RANGOON WATER-WORKS BILL, 1884.

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A Bill to confer powers and impose duties on the Municipal Committee for the Town of Rangoon in respect to the construction and maintenance of Water-works and the supply of water in that Town.

WHEREAS a scheme has been settled and to some extent carried out for the construction and maintenance of water-works and the supply of water to the Town of Rangoon by the Municipal Committee for that town;

And whereas it is necessary for the purposes of the scheme that the Royal Lake at Rangoon, and all existing tanks, cisterns, springs, wells, pumps, reservoirs, conduits, aqueducts and works, and all land, bridges, buildings, engines, works, materials and things connected therewith or appertaining thereto, should vest in, and be under the control of, the Municipal Committee for that town;

And whereas it is expedient that powers should be conferred and duties imposed upon the said Municipal Committee with respect to the construction and maintenance of the proposed water-works and the supply of water to the Town of Rangoon, and otherwise in relation thereto, and that all acts already done by the said Municipal Committee which could have been lawfully done if this Act had been in force should be validated;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. *(1)* This Act may be called the Rangoon Water-works Act, 1884; and

Short title and commencement.

(2) It shall come into force on the first day of January, 1885.

(3) But all acts done before that date which could have been lawfully done if this Act had been in force shall be deemed to have been lawfully done.

2. On and from the day on which this Act comes into force, the following amendments shall be made in the British Burma Municipal Act, 1874, section 13, namely:—

Amendment of section 13 of the British Burma Municipal Act, 1874. VII of 1874.

(*a*) the second paragraph shall be repealed; and

(*b*) in the 3rd paragraph, for the words "either of the rates" the words "the rate," and in the fourth paragraph, for the words "every rate" the words "the rate," shall be substituted.

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

Definitions.

(1) "town" means the local area for the time being comprised within the municipal limits of the Town of Rangoon, and includes the cantonment of Rangoon and the Central Jail:

(2) "public street" means any street, road, thoroughfare, passage or place over which the public have a right of way; and includes the surface-soil and sub-soil of any such street, and the footway and drains of any such street, and any bridge, culvert or causeway forming part of any such street: [Cf. Ben. Act IV of 1876, s. 3, & Act XXII of 1883, s. 2.]

(3) "owner" includes— [Cf. Ben. Act IV of 1876, s. 3.]

(*a*) the person who is for the time being entitled to the rent of the house or land in respect of which the word is used and who is not liable to pay rent for that house or land to any other person;

(*b*) an agent of that person; and

(*c*) a trustee for that person:

(4) "house" includes schools; also factories and other buildings in which persons are employed: [38 & 39 Vic., c. 55, s. 4.]

(5) "water-works" includes all lakes, streams, tanks, cisterns, springs, wells, pumps, reservoirs, conduits, aqueducts and works, and all land, bridges, buildings, engines, works, materials and things for supplying, or used for supplying, water under this Act to the Town of Rangoon: [Cf. 38 & 39 Vic., c. 55, s. 4.]

(6) "the Committee" means the Municipal Committee for the Town of Rangoon for the time being constituted under the British Burma Municipal Act, 1874: VII of 1874.

(7) "water-rent" includes any rent, reward or payment to be made to the Committee in connection with the supply of water under this Act, but does not include the rate leviable under Chapter V: and

Rangoon Water-works Bill.
(Chapter II.—Vesting of Property. Sec. 4.)
(Chapter III.—Construction and Maintenance of Water-works. Secs. 5—8.)
(Chapter IV.—Supply of Water. Secs. 9—11.)

[26 & 27 Vic., c. 93, s. 12: Ben. Act IV of 1876, s. 130.]

(8) a "supply of water for domestic purposes" does not include a supply of water for cattle, or for horses, or for washing carriages, where the cattle, horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade, manufacture or business, or for watering gardens, or for fountains or for any ornamental purpose.

CHAPTER II.

VESTING OF PROPERTY.

4. There shall vest in, and be under the control of, the Committee, freed and discharged of and from all manner of rights, titles, privileges or claims whatsoever of any other person,—

Vesting of Royal Lake and cisterns, &c., in Committee.

[Cf. Bom. Act III of 1872, s. 64.]

(*a*) the Royal Lake at Rangoon and all the land adjacent thereto and included within the limits delineated in a plan deposited in the office of the Secretary to the Chief Commissioner and authenticated by the signature of the Chief Commissioner and marked A; and

[Cf. Ben. Act IV of 1876, s. 158.] [See also 38 & 39 Vic., c. 55, s. 64.]

(*b*) all existing tanks, cisterns, springs, wells, pumps, reservoirs, conduits, aqueducts and works, used or intended to be used for supplying water to the public in the town, and all land, bridges, buildings, engines, works, materials and things connected therewith, or appertaining thereto:

Provided as follows:—

(1) Any person may at any time, subject to such rules as the Committee make in this behalf, row, sail or fish on or in the waters of the Royal Lake:

(2) Nothing in this section shall affect the land adjacent to the Royal Lake and known as the Dalhousie Park, but that land shall be preserved as a public park for the use of the public.

CHAPTER III.

CONSTRUCTION AND MAINTENANCE OF WATER-WORKS.

[Cf. 10 Vic., c. 17, s. 35.] [Ben. Act IV of 1876, s. 129.]

5. Subject to rules to be made under this Act by the Chief Commissioner, the Committee shall cause such mains and pipes to be laid, and such water-works to be constructed, as may be necessary for the supply of pure and wholesome water sufficient for the use of the inhabitants for domestic purposes in all parts of the town:

Duty of Committee to construct works for supply of water.

Provided that the Chief Commissioner may, by order in writing, from time to time exempt any part of the town from the provisions of this section, and cancel any such exemption.

[Cf. Ben. Act IV of 1876, s. 129.]

6. The Committee shall cause such stand-pipes or pumps to be erected at such intervals, as the Chief Commissioner, by rules made under this Act, prescribes, in all the chief public streets in those parts of the town in which mains or pipes have been laid under the last foregoing section.

Duty of Committee to erect stand-pipes.

7. The Committee may, for the purpose of constructing or maintaining any water-works for the supply of water to the town, enter upon any land and take levels of the same, and set out such parts thereof as they think necessary, and dig and break up the soil of the land:

Power for Committee to execute works.

Provided that, in the exercise of these powers, the Committee shall do as little damage as may be, and shall make full compensation to all persons interested for all damage sustained by them through the exercise of these powers, 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. X of 1870.

8. The Committee may open and break up the soil and pavement of the public streets, and lay down and place pipes, conduits, and other works and engines, and, from time to time, repair, alter or remove the same, and do all other acts which the Committee, from time to time, deem necessary for supplying water to the town.

Power for Committee to break up streets.

CHAPTER IV.

SUPPLY OF WATER.

A.—Supply of water for domestic purposes to Occupiers of Houses or Lands.

9. *(1)* Every occupier of a house or land situate in a part of the town not exempted under the proviso to section 5 shall be entitled to have free of further charge, through the communication-pipes constructed as hereinafter provided, a supply to the house or land of *fifteen hundred gallons* of pure and wholesome water for domestic purposes for every *rupee* paid to the Committee as hereinafter provided for water-rate on account of the house or land. [Ben. Act V of 1876, s. 133.]

Right of occupier to certain supply of water for domestic purposes.

(2) If the Committee have reason to believe that the occupier of any house or land consumes more water than he is entitled to have free of further charge under this section, they may provide a water-metre at their own expense, and attach it to such part of the communication-pipes as they think fit.

(3) If the occupier consumes any water over and above the quantity to which he is entitled free of further charge under this section, he shall pay for it at the rate of *one rupee* for every *fifteen hundred gallons, or part of fifteen hundred gallons.*

10. Every occupier of a house or land who is entitled to a supply of water free of further charge under the last foregoing section shall, subject to the following provisions, be entitled to have communication-pipes laid down from the service-pipes of the Committee, for bringing into his house or land a reasonable supply of water: [Ben. Act IV of 1876, s. 132.]

Right of occupier paying water-rate to bring water into his house or land.

Provided that the Committee may cut off the supply of water to any house or land while the house or land is unoccupied.

11. The communication-pipes leading the water from the service-pipes of the Committee into the house or land of any occupier, and the pipes and works within the house connected therewith, shall be of such character, dimensions and material as the Committee fix and approve, and shall be constructed at the expense of the person requiring them.

Construction of communication-pipes.

Rangoon Water-works Bill.
(Chapter V.—Water-rates and Water-rents. Sec. 21.)

[Ben. Act IV of 1876, s. 146.]

Inspection of works, pipes and fittings before connection with service-pipes.

12. *(1)* Before a connection for the supply of water from the service-pipes of the Committee to any house or land is sanctioned by the Committee, the Committee shall cause all the works, pipes and fittings within the house or land to be inspected by such officer as the Committee appoint in this behalf.

(2) The cost of an inspection under this section shall be payable in advance by the person applying for the connection, at such rate as the Committee, at a special meeting, from time to time, direct.

(3) Until the officer has certified that the works, pipes and fittings have been executed and put up in a satisfactory manner, a connection with the Committee's service-pipes shall not be permitted.

[Ben. Act IV of 1876, s. 471.]

Connection with service-pipes to be executed only by an officer of the Committee.

13. *(1)* The connection with the service-pipes of the Committee, and the laying of communication-pipes under any public street, shall be executed by an officer of the Committee authorized in that behalf.

(2) The expense of making the connection shall be payable in advance by the person applying for the same, at such rates as the Committee, at a special meeting, from time to time, direct.

[Ben. Act IV of 1876, s. 138.]

Power for officer of Committee to enter premises.

14. *(1)* The officer authorized in that behalf by the Committee may, between the hours of seven in the forenoon and five in the afternoon, enter into or on any house or land supplied with water as aforesaid in order to examine all pipes, works and fittings connected with the supply of water, and to ascertain if there is any waste or misuse of the water.

(2) If any such officer at any such time is refused admittance into any such house or land for the purposes aforesaid, or is prevented from making such examination as aforesaid, the Committee may forthwith turn off or cut off the water from the house or land.

[Ben. Act IV of 1876, s. 139.]

Power for Committee to turn off water when pipes are out of repair.

15. If any pipes, works or fittings connected with the supply of water to any house or land are at any time found, on examination, by any officer of the Committee authorized in that behalf, to be out of repair to such an extent as to cause any waste of water, the Committee may, after the expiry of twenty-four hours from the service of notice in writing to this effect, cause the water to be turned off or cut off from the house or land, and may recover the expense incurred for turning off the water from the occupier of the house or land.

B.—Supply for gratuitous use in Stand-pipes.

Duty of Committee to supply water for gratuitous use in stand-pipes.

16. The Committee shall cause a sufficient quantity of pure and wholesome water to be supplied for the gratuitous use of the inhabitants of the town for domestic purposes in the stand-pipes to be erected by the Committee under section 6.

C.—Supply of water for extinguishing fires and cleansing streets.

[Cf. 10 Vic., c. 17, s. 38.]

Duty of Committee to fix fire-plugs in mains.

17. The Committee shall fix and renew and keep in effective order such fire-plugs in such of the mains and other pipes laid by them, and shall deposit keys of the fire-plugs at such places, as the Chief Commissioner from time to time, by rules made under this Act, directs.

[Cf. 10 Vic., c. 17, s. 37.]

Duty of Committee to supply water for cleansing sewers and drains.

18. In all the mains and pipes to which any fire-plug is fixed, the Committee shall provide and keep constantly laid on, unless prevented by unusual drought or other unavoidable accident, a sufficient supply of water for use with fire-engines, for cleansing the sewers and drains, and for cleansing and watering the streets.

D.—Supply of Water for other than domestic purposes.

[Ben. Act IV of 1876, s. 132.]

Supply for other than domestic purposes.

19. *(1)* The Committee may, from time to time, supply any person with water by measurement for other than domestic purposes, for such remuneration and on such terms and conditions as shall be agreed on between the Committee and the person:

Provided that,—

(a) notwithstanding any such agreement, a person shall not be entitled to such a supply whenever and as long as the Committee are of opinion that the supply would interfere with the proper supply of water for domestic purposes under this Act; and

(b) the Committee shall not be liable, in the absence of express stipulation under any such agreement, to any forfeiture, penalty or damages for not supplying the water if the want of the supply arises from unusual drought or other unavoidable cause or accident.

(2) When any such agreement has been entered into by the Committee with any person, the Committee may, subject to such charges or rates as may have been fixed by the Committee at a special meeting, lay down, or allow to be laid down, the necessary communication-pipes and works, of such dimensions and character as may be fixed by the Committee, for supplying the person with water in accordance with the terms of the agreement.

E.—Pressure of water supplied.

[Cf. 10 Vic., c. 17, s. 35; Ben. Act IV of 1876, s. 131.]

Pressure at which water must be kept.

20. From such a day as the Chief Commissioner, by notification in the local official Gazette, directs in this behalf, the supply of water in the mains and pipes which the Committee are required to lay under this Act shall be laid on at such pressure as the Chief Commissioner, by rules made under this Act, prescribes.

CHAPTER V.

WATER-RATES AND WATER-RENTS.

[Cf. Act VII of 1874, s. 18.]

Power for Committee to impose water-rate.

21. *(1)* To provide for the supply of water under this Act the Committee may, by a resolution passed at a special meeting and confirmed by the Chief Commissioner, impose an annual rate on all houses and lands situate in the town or any part thereof not exceeding two per centum of their annual value calculated on such principles as the Chief Commissioner, by rules made under this Act, prescribes.

Rangoon Water-works Bill.
(Chapter VI.—Reciprocal Rights of Owners and Occupiers to supply of Water to Houses. Secs. 28—30.)

(2) It shall be at the option of the Committee, when a rate under sub-section *(1)* has been imposed, to levy in lieu thereof on any house of which the annual value is less than one hundred rupees an annual rate not exceeding one pie for every three square feet of the ground covered by the house.

(3) The rate leviable under this section in respect of any house or land shall be payable by the occupier of the house or land.

[Cf. Act VII of 1874, ss. 11 and 25.]

Power to abolish or reduce tax, or exempt from taxation.

22. The Committee, by a resolution passed at a special meeting and confirmed by the Chief Commissioner, may abolish or reduce in amount any tax imposed under the last foregoing section, or exempt any house or land, or description of house or land, from the tax.

Power to Chief Commissioner to suspend levy of tax.

23. *(1)* If it at any time appears to the Chief Commissioner, on complaint made or otherwise, that the tax imposed under section 21 is unfair in its incidence, or that the levy thereof or of any part thereof is obnoxious to the interests of the general public, or that any houses or lands, or description of houses or lands, should be exempted from the payment of the same, he may require the Committee to take within a specified period measures to remove the objection, or grant the exemption, as the case may be; and if within that period the requirement is not complied with to the satisfaction of the Chief Commissioner, he may, by notification in the local official Gazette, suspend the levy of the tax or of such part thereof until the objection has been removed or the exemption granted.

(2) The Chief Commissioner may at any time, by a like notification, rescind any such suspension.

[Cf. Act VII of 1874, s. 27.]

Constitution and application of water-supply fund.

24. *(1)* A separate fund, to be called the water-supply fund, shall be established, and there shall be credited to it the existing balance (if any) of the water-rate levied under section 13 of the British Burma Municipal Act, 1874, the proceeds of the rate leviable under this chapter and all water-rents.

VII of 1874.

(2) The water-supply fund shall, subject to such rules as may be made by the Chief Commissioner in this behalf, be applicable at the discretion of the Committee to the supply of water in the town and to no other purpose.

[Cf. Act VII of 1874, s. 29.]

Custody of, and disbursement from, fund.

25. *(1)* The balance standing to the credit of the water-supply fund shall be kept in the Government treasury.

(2) No payment shall be made out of the fund except under the signature of the President or Vice-president and one other member of the Committee.

[Act VII of 1874, s. 44.]

Recovery of arrears of water-rates and water-rents.

26. All arrears of water-rates or water-rents under this Act may be recovered, on application to such Revenue-officer as the Local Government may appoint in this behalf, as if they were arrears of land-revenue.

[Ben. Act VI of 1876, s. 140.]

Power for Committee to turn off water on neglect to pay the rate or charge.

27. If any person supplied with water neglects to pay—

(a) the rate leviable under this chapter, or

(b) any water-rent payable by him to the Committee,

the Committee may turn off or cut off the water from the house or land in respect of which the rate or water-rent is payable, by cutting off the pipe to the house or land, or by such other means as the Committee think fit, and may recover in manner provided by the last foregoing section the expense of turning off or cutting off the water from the person:

Provided that the stopping or cutting off the supply of water shall not relieve any person from any penalties or liabilities which he has otherwise incurred.

CHAPTER VI.

RECIPROCAL RIGHTS OF OWNERS AND OCCUPIERS TO SUPPLY OF WATER TO HOUSES.

[Ben. Act IV of 1876, s. 10.]

Power for occupier of house to require owner to provide works for water-supply.

28. *(1)* Any occupier holding direct from the owner of a house may, by notice in writing signed by him, require the owner of the house to construct all such works as may be necessary for bringing into the house a supply of water for domestic purposes.

(2) Every notice under this section shall contain an undertaking on the part of the occupier to pay interest at the rate of one per centum per mensem, calculated from the date of the completion of the works, on the cost of the works during the residue of his term of occupation.

(3) If the house, or the land attached thereto, does not abut upon a street in which there is a supply-main, the occupier shall undertake to pay the cost of connecting the house with the nearest supply-main.

[Ben. Act IV of 1876, s. 151.]

Power for occupier to make works in default of owner.

29. *(1)* If the owner does not, within three months from the service of the notice mentioned in the last foregoing section, cause such works as aforesaid to be completed, the occupier may cause the works to be completed, and may deduct the cost of the works from the rent payable by him in respect of the house:

Provided that the occupier shall not deduct from the rent on account of the cost—

(a) a sum exceeding the amount of six months' rent; or

(b) where the house or the land attached thereto does not abut upon a street in which there is a supply-main, the cost of connecting the house with a supply-main.

(2) The deduction which an occupier is authorized to make under this section shall be made by six equal monthly instalments.

(3) Interest on each instalment shall be payable to the owner by the occupier at the rate of one per centum per mensem from the time when it is deducted.

[Ben. Act IV of 1876, s. 152.]

What works are sufficient for supply of water to house.

30. The works shall not be deemed sufficient for bringing into the house a supply of water for domestic purposes unless the following taps, with the necessary works in connection therewith, are provided, namely:—

(a) two taps in the house;

Rangoon Water-works Bill.
(Chapter VII.—Rules. Secs. 37—39.)

(*b*) one tap in the cook-room of, or other building attached to, the house, and

(*c*) one tap in or near the stables or other outhouses belong to the house:

Provided that, if the annual rent of the house with the buildings and land attached thereto is less than three hundred rupees, it shall be sufficient to provide one tap only, together with the necessary works in connection therewith, within the house and the buildings and land attached thereto.

[Ben. Act IV of 1876, s. 153.]

31. Works for introducing a supply of water to a house shall not be commenced by the owner without sending a specification and estimate of the cost thereof to the occupier, nor by the occupier without sending such a specification and estimate to the owner.

Estimate and specification of works to be sent.

[Ben. Act IV of 1876, s. 154.]

32. If there is any difference between the owner and the occupier respecting the cost or the sufficiency of the proposed works, either the owner or the occupier may refer the difference to the Committee, and the written award of any officer authorized by the Committee in this behalf shall be final and binding on the owner and the occupier.

Power to refer to Committee.

[Ben. Act IV of 1876, s. 155.]

33. There shall be payable by the person making a reference to the Committee under the last foregoing section a fee (not exceeding ten rupees) at the rate of two rupees for every hundred rupees of the monthly rent of the house in respect of the water-supply to which the difference has arisen.

Fee on reference.

[Ben. Act IV of 1876, s. 156.]

34. *(1)* The owner of any house or land shall keep all works connected with the supply of water to the house or land in substantial repair.

Duty of owner to keep works in repair.

(2) If the owner fails to put any such works in substantial repair after being requested by the occupier to do so, the occupier may cause the necessary repairs to be made, and may deduct the cost of the repairs from the rent payable by him in respect of the house or land.

[Ben. Act IV of 1876, s. 157.]

35. Any owner to whom any sum is payable under section 28 or section 29 may recover the sum from the person liable to pay it as if it were rent payable by that person for the house in respect of which the expenses have been incurred.

Power for owner to recover sums payable by occupier.

36. Nothing in this chapter shall affect any contract in writing between the owner and occupier of any house or land.

Saving of contracts between owners and occupiers.

CHAPTER VII.

RULES.

37. The Chief Commissioner may, from time to time, make rules consistent with this Act—

Power for Chief Commissioner to make rules.

(*a*) to prescribe the size and nature of the mains and pipes to be laid and the water-works to be constructed by the Committee for the supply of water under this Act;

(*b*) to prescribe the size and nature of standpipes or pumps to be erected by the Committee under this Act, and the intervals at which they must be erected;

(*c*) to prescribe the mains or pipes in which fire-plugs are to be fixed, and the places at which keys of the fire-plugs are to be deposited, by the Committee under this Act;

(*d*) to prescribe the pressure at which the water supplied by the Committee under this Act is to be laid on either generally or at specified times;

(*e*) to regulate the assessment and collection of the rates leviable under Chapter V, and the mode in which the proceeds of the rates are to be applied; and

(*f*) generally to define and regulate the powers and duties of the Committee under this Act.

38. *(1)* The Committee may, from time to time, at a special meeting make rules consistent with this Act—

Power for Committee to make rules.

(*a*) for regulating rowing, sailing and fishing on the Royal Lake; and

(*b*) for preventing the waste or misuse of water supplied by them, and for defining the nature of the pipes, casks, cisterns and other apparatus to be used by every person supplied by them with water.

In making a rule under this section the Committee may direct that a breach of it shall be punishable with fine which may extend to fifty rupees, and, when the breach is a continuing one, with a further fine of five rupees for every day after the first during which the breach continues. [Act VII of 1871, s. 42.]

(2) If any person, having or requiring a supply of water from the Committee, fails to comply with any rules made under clause (*b*) of this section, the Committee may refuse to supply water to him, and may cut off the water supplied to him, unless and until the rules are complied with:

Provided that the stopping or cutting off the supply of water shall not relieve any person from any penalties or liabilities which he has otherwise incurred.

39. *(1)* The Chief Commissioner or Committee shall, before making any rules under section 37 or section 38, publish a draft of the proposed rules for the information of persons interested.

Procedure for making rules.

(2) The publication shall be made—

(*a*) in the case of rules under section 37, in such manner as in the opinion of the Chief Commissioner is sufficient; and

(*b*) in the case of rules under section 38, in such manner as the Chief Commissioner, by order, directs.

(3) A notice shall be published with the draft rules specifying a date at or after which the draft shall be taken into consideration.

(4) The Chief Commissioner or Committee shall, before making the rules, receive and consider any objection or suggestion which is made by any person with respect to the draft before the date so specified.

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(Chapter VIII.—Penalties.—Secs. 41—44.)

40. Every rule made under section 37 or section 38 shall be published in the local official Gazette in English and in such other language or languages as the Chief Commissioner directs, and such publication shall be conclusive evidence that the rule has been made as required by section 39.

Publication of rules.

CHAPTER VIII.

PENALTIES.

[Cf. Ben. Act IV of 1876, s. 149.]

41. If any person unlawfully obstructs the flow of, flushes, draws off, diverts or takes, water from any water-works belonging to, or under the management or control of, the Committee, or from any water or streams by which these water-works are supplied, or wastes any water supplied to him under this Act, he shall be punished with fine which may extend to one hundred rupees.

Penalty for obstructing, diverting or wasting water.

[26 & 27 Vic., c. 93, s. 18.]

42. If any person—

Penalty for unauthorized application of water.

(*a*) uses for other than domestic purposes any water supplied under this Act for domestic purposes; or

(*b*) where water is supplied under section 19 for a specified purpose, uses that water for any other purpose,

he shall be punished with fine which may extend to fifty rupees, without prejudice to the right of the Committee to recover from him the price of the water misused.

[Cf. Ben. Act IV of 1876, s. 159.]

43. *(1)* If any person—

Penalties for causing the water of the Committee to be fouled, &c.

(*a*) bathes in any water-works, or washes, throws or causes to enter therein any dog or other animal, or

(*b*) throws any rubbish, dirt, filth or other noisome thing into any water-works, or washes or cleanses therein any cloth, wool, leather or skin of any animal, or any clothes or other thing, or

(*c*) causes the water of any sink, sewer or drain, or of any steam-engine or boiler, or any other filthy water belonging to him or under his control, to turn or be brought into any water-works, or does any other act whereby the water in any water-works is fouled,

he shall, for every such offence, be punished with fine which may extend to one hundred rupees, and to ten rupees in addition for each day (if more than one) during which the offence continues.

[Act VII of 1884, s. 44.]

44. Prosecutions under this Act or the rules made under this Act may be instituted by the Committee or any person authorized by them in this behalf, and not otherwise.

Prosecutions.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill, which relates to the Rangoon water-works now in process of construction, is twofold.

2. The first is the vesting in the Municipal Committee for the Town of Rangoon of the Royal Lake at Rangoon and the water-works connected therewith. The Dalhousie Park, in which the lake is situated, was dedicated by the Marquis of Dalhousie to the use and recreation of the public. At present the public enjoy the privilege not only of boating and fishing, but also of bathing in the waters of the lake. As one of the main features of the scheme of the new water-works is that the town should be supplied with water for drinking as well as other purposes by a main led from the lake, it is essential to take steps for ensuring the purity of the water of the lake. The best means of doing this seems to be to vest the control of the lake in the Municipal Committee for the Town of Rangoon, to whom under the present scheme is assigned the duty of constructing and maintaining the new water-works. This is accordingly done by Chapter II of the Bill. In order, however, that the existing privileges of the public may not be interfered with more than is necessary to prevent any defilement of the water, the same chapter specially reserves the right of the public to row, sail or fish in or on the lake at any time, subject only to such rules as the Municipal Committee may make in this behalf. In order further to make it perfectly clear that nothing in the chapter affects the rights of the public with respect to the Dalhousie Park, a clause to this effect has been added.

3. The second object of this Bill is to confer powers and impose duties upon the Municipal Committee with respect to the construction and maintenance of the proposed water-works, and to the supply of water to the Town of Rangoon. And to this object the other provisions of the Bill are directed.

4. Chapter III deals generally with the construction and maintenance of the water-works. It imposes on the Committee a duty to construct the works necessary for supplying a sufficient quantity of pure and wholesome water for domestic purposes, and confers on them the requisite powers of entering private land and breaking up streets.

5. Chapter IV provides, first, for the supply of water for domestic purposes to occupiers of houses or lands. It declares the right of every occupier, in a part of the town in which it is the duty of the Committee to supply water, not only to a certain supply of water for domestic purposes, but also to have communication-pipes laid down for the purpose of bringing the water into his house or land. The communication-pipes must, however, be made to the satisfaction of a municipal officer, by whom also the connection with the service-pipes must be made. A municipal officer is also authorized to enter the premises at certain times and to

inspect the pipes and works connected with the supply of water; and, if the pipes and works are found to be at any time out of repair so as to cause any waste of water, the Municipal Committee are empowered, after notice, to cut off the supply of water to the house or land.

The chapter further imposes a duty on the Municipal Committee to supply a sufficient quantity of water for gratuitous use in stand-pipes.

Then the duty of the Committee to fix fire-plugs and supply water for cleansing sewers and drains is prescribed.

Next, there are provisions for the supply by measurement, under special agreement, of water for other than domestic purposes.

Lastly, there is a provision declaring that, on and after such day as the Chief Commissioner may fix, the water shall be kept at such pressure as the Chief Commissioner, by rules, prescribes. This provision cannot be put in force at once, inasmuch as the water is at present driven through the pipes by the force of gravitation only, and the pressure cannot, therefore, be artificially increased or reduced. But as it may, perhaps, be hereafter decided to provide the necessary tanks and pumping apparatus required to raise the pressure of the water, it has been thought advisable to insert a provision of this nature.

6. Chapter V deals with water-rates and water-rents. In lieu of the existing provisions on this subject contained in the British Burma Municipal Act, 1874, which are repealed by the Preliminary chapter of the Bill, this chapter empowers the Committee, with the sanction of the Chief Commissioner, to impose an annual water-rate on all houses and lands situate in the town, not exceeding two per cent. of their annual value, calculated on such principles as the Chief Commissioner by rule prescribes, and also empowers the Committee, with the like sanction, to abolish or reduce any such tax, or to exempt any houses or lands from taxation. The Chief Commissioner is authorized to suspend the levy of the tax if it appears to him that the tax is unfair in its incidence, or that the levy thereof or of any part thereof is obnoxious to the interests of the general public, or that any houses or lands should be exempted from payment of the same, and the Committee refuse to remove the objection or grant the exemption. The chapter also provides for the constitution and application of a water-supply fund, and for the recovery of arrears of water-rates and water-rents.

7. Chapter VI is concerned with the reciprocal rights of owners and occupiers in respect to the supply of water to houses. These provisions are modelled on the similar provisions in force in Calcutta, and may generally be described as empowering the occupier, after notice to and default by the owner, to construct such works as may be necessary for bringing into the house a supply of water for domestic purposes, and to deduct the cost from his rent. The occupier, however, will be required to pay, in addition to his rent, interest at the rate of one per cent. per month on the money expended by the owner on the construction of such works or recovered from him under the provisions just referred to. The other provisions of the chapter are subsidiary to the above, and among other matters provide for the reference of matters of difference between the owner and occupier to the Committee. Lastly, there is a clause saving from the chapter contracts in writing between the owners and occupiers of houses or lands.

8. Chapter VII empowers both the Chief Commissioner and the Committee to make rules for regulating subsidiary matters connected with the subject of the Bill, and prescribes the procedure for making such rules and the mode in which the rules are to be published; while Chapter VIII enacts penalties for obstructing, diverting, wasting or misusing and for fouling the water contained in the water-works, and provides for the institution of prosecutions under the Bill by the Committee.

9. Lastly, it may be noticed that, as the water-works to which the Bill relates have been to a great extent practically carried out, a clause has been inserted in the Preliminary chapter validating all acts already done which would have been lawful had the provisions of the Bill been in force.

The 11th June, 1884.

C. P. ILBERT.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th June, 1884:—

No. 5 OF 1884.

A Bill for the validation of certain licenses to solemnize Marriages granted to Ministers of Religion under Act XXV of 1864.

WHEREAS by section 4 of Act XXV of 1864 (*to provide further for the solemnization of Marriages in India of persons professing the Christian Religion*) it was enacted that, from and after the first day of July, 1864, certain Governments therein named should have authority to grant licenses to ministers of religion to solemnize marriages within the territories subject to such Governments respectively;

And whereas, in exercise of the authority so conferred, the Governments therein named granted licenses to certain ministers of religion to solemnize marriages;

And whereas Act XXV of 1864 was repealed by Act V of 1865 (*to provide for the solemnization of Marriages in India of persons professing the Christian Religion*);

And whereas by section 9 of the latter Act it was enacted that, from and after the commencement of that Act, all marriages which should be solemnized in India otherwise than in accordance with the provisions of the fifth and sixth sections of that Act should be null and void;

And whereas by section 6 of the same Act it was enacted that marriages might be solemnized in India by (among other persons) any minister of religion who, under the provisions of that Act, had obtained a license to solemnize marriages;

And whereas Act V of 1865 was repealed by the Indian Christian Marriage Act, 1872; XV of 1872.

And whereas by section 4 of the latter Act it is enacted that every marriage between persons, one or both of whom is a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and that any such marriage solemnized otherwise than in accordance with such provisions shall be null and void;

And whereas by the next following section of the same Act it is enacted that marriages may be solemnized in India by (among other persons) any minister of religion licensed under the same Act to solemnize marriages;

And whereas neither in Act V of 1865 nor in the Indian Christian Marriage Act, 1872, was there or is there any provision either saving licenses granted under Act XXV of 1864 or permitting a marriage to be solemnized by a minister of religion who had obtained a license to solemnize marriages under Act XXV of 1864 only; XV of 1872.

And whereas certain marriages have been solemnized both while Act V of 1865 was in force and since the passing of the Indian Christian Marriage Act, 1872, by ministers of religion who had obtained licenses to solemnize marriages under Act XXV of 1864, but had never obtained licenses to solemnize marriages under Act V of 1865 or the Indian Christian Marriage Act, 1872, as the case may be, and doubts have therefore arisen as to the validity of such marriages; XV of 1872. XV of 1872.

And whereas it is expedient to remove such doubts and to declare the continued validity of licenses to solemnize marriages granted to ministers of religion under Act XXV of 1864;

It is hereby enacted as follows:—

Validation of licenses to solemnize marriages granted to ministers of religion under Act XXV of 1864.

1. A license to solemnize marriages granted to a minister of religion under Act XXV of 1864 shall be deemed, if in force on the date on which Act V of 1865 came into force, to have been, while that Act was in force, a license granted under that Act, and, if in force on the date on which the Indian Christian Marriage Act, 1872, came into force, to have been since that Act came into force, and to be a license granted under that Act. XV of 1872.

5 *c*

STATEMENT OF OBJECTS AND REASONS.

BY section 4 of Act XXV of 1864 (*to provide further for the solemnization of Marriages in India of persons professing the Christian Religion*) it was enacted that, from and after the first day of July, 1864, the Governor General of India in Council, the Governors of Madras and Bombay in Council, and the Lieutenant-Governors of Bengal, the North-Western Provinces and the Panjáb should have authority to grant licenses to ministers of religion to solemnize marriages within the territories subject to such Governor General, Governors and Lieutenant-Governors respectively. In exercise of the authority conferred by this section, the Governments therein named licensed certain ministers of religion to solemnize marriages within the territories subject to them respectively. Act XXV of 1864 was repealed by Act V of 1865 (*to provide for the solemnization of Marriages in India of persons professing the Christian Religion*). The ninth section of this Act declared that, from and after the commencement of that Act, all marriages which should be solemnized in India otherwise than in accordance with the provisions of the fifth and sixth sections of the Act should be null and void; and the sixth section of the Act, which specified the persons by whom marriages might be solemnized in India, only permitted a minister of religion who, under the provisions of that Act, had obtained a license to solemnize marriages. Act V of 1865 was in turn repealed by the Indian Christian Marriage Act, 1872. The fourth section of this Act declares that every marriage between persons, one or both of whom is a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and that any such marriage solemnized otherwise than in accordance with such provisions shall be void; and the following section of the Act, which specifies the persons by whom marriages may be solemnized in India, only permits a minister of religion licensed under the Act to solemnize marriages. There was no provision in Act V of 1865, and there is none in the Indian Christian Marriage Act, 1872, either saving licenses granted under Act XXV of 1864 or permitting ministers of religion licensed under that Act only to solemnize marriages.

2. It has been brought to the notice of the Government that marriages have been solemnized in India, both since the commencement of Act V of 1865 and since the passing of the Indian Christian Marriage Act, 1872, by ministers of religion who were not licensed under either of these Acts but under the Act of 1864. As it seems to the Government that the effect of section 9 of the Act of 1865 and of section 4 of the present Act is to make such marriages of doubtful validity, and as it is desirable to remove such doubts, the present Bill has been prepared. It simply declares that a license to solemnize marriages granted to a minister of religion under Act XXV of 1864 shall be deemed, if in force on the date on which Act V of 1865 came into force, to have been, while that Act was in force, a license granted under that Act, and, if in force on the date on which Act XV of 1872 came into force, to have been since that Act came into force, and to be, a license granted under that Act.

The 6th June, 1884.

C. P. ILBERT.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 25th June, 1884:—

No. 6 OF 1884.

A Bill to amend the Indian Salt Act, 1882.

WHEREAS it is expedient to exclude the Province of Sindh from the operation of those portions of the Indian Salt Act, 1882, which do not extend by their own operation to the whole of British India, and whereas it is also expedient to remove certain doubts which have been raised as to the meaning of the words "importation of salt" in section 27 of the same Act; It is hereby enacted as follows:—

XII of 1882.

Repeal of words "to the Province of Sindh" and "Province" in section 1 of Act XII of 1882.

1. From such day as the Governor of Bombay in Council, by notification in the official Gazette, fixes in this behalf, the words "to the Province of Sindh" and the word "Province," in paragraphs three and four respectively of section 1 of the Indian Salt Act, 1882, shall be repealed.

Amendment of section 27 of the same Act.

2. For the word "importation" in section 27 of the same Act, the word "bringing" shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

1. The object of this Bill is to make two amendments in the Indian Salt Act, 1882.

2. It has been found that certain provisions of the Indian Salt Act, 1882, are not suitable to the circumstances of the Province of Sindh, to which they at present extend, and it is proposed to replace them by an enactment to be passed by the local legislature providing for the requirements of the whole Presidency of Bombay inclusive of Sindh. It is doubtful, however, whether this course can be adopted until the words in section 1 of the Act which bring the Province of Sindh within the operation of those provisions have been repealed. Those words are accordingly repealed by section 1 of the Bill, and, in order that the repeal may be made to operate from the date on which the proposed new Act of the local legislature comes into force, it is left to the Governor of Bombay in Council to fix the date from which the section shall have effect.

3. The object of the amendment made by section 2 of the Bill is to remove a doubt as to the meaning of section 27 of the Act, raised by a ruling of the Judicial Commissioner in Sindh, who has held that the words "importation of salt" in that section cover only the bringing in of salt as merchandize for the purposes of commerce and in merchantable quantities. The Bill substitutes for the word "importation" the word "bringing."

The 19th June, 1884.

A. COLVIN.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 25th June, 1884:—

No. 7 OF 1884.

THE PANJÁB COURTS BILL, 1884.

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A Bill to amend the Law relating to Courts in the Panjáb.

WHEREAS it is expedient to amend the law relating to Courts in the Panjáb; and whereas the Secretary of State for India in Council has given his previous sanction to the passing of this Act; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. *(1)* This Act may be called the Panjáb Courts' Act, 1884. Short title.

(2) It extends to all the territories for the time being under the administration of the Lieutenant-Governor of the Panjáb; and Local extent.

(3) It shall come into force on the first day of October, 1884. Commencement.

2. On and from that day the Acts mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column thereof. Repeal of Acts.

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

(1) "Assistant Judge" includes a Deputy Commissioner invested with the powers of an Assistant Judge.

(2) "Assistant Commissioner" includes Extra Assistant Commissioner.

(3) "Revenue Court" means the Court of a Financial Commissioner, of a Commissioner, of a Deputy Commissioner, of an Assistant Commissioner or of a Tahsíldár exercising jurisdiction in suits of any of the classes mentioned in section 48.

(4) "Interlocutory order" means an order not having the force of a decree under the Civil Procedure Code or any other enactment, nor being a judgment, order to give security, order of acquittal or order under the Code of Criminal Procedure for the disposal of property or the proceeds thereof, passed or made by a Criminal Court. XIV of 1882. X of 1882.

The Panjáb Courts Bill, 1884.
(Chapter II.—Of the Constitution of the Courts.—Sections 4-16.)

CHAPTER II.

OF THE CONSTITUTION OF THE COURTS.

4. Besides the Courts established under any other law for the time being in force, there shall be the following grades of Courts (namely):— Grades of Courts.

(1) the Chief Court;
(2) the Divisional Court;
(3) the Court of the Assistant Judge;
(4) the Court of the Subordinate Judge of the first class;
(5) the Court of the Subordinate Judge of the second class;
(6) the Court of the Subordinate Judge of the third class;
(7) the Court of the Subordinate Judge of the fourth class.

[Act XVII of 1877, s. 5.]

5. The Chief Court shall consist of three or more Judges who shall be appointed by the Governor General in Council, and shall hold their offices during his pleasure, and of whom one at least shall always be a barrister of not less than five years' standing. Constitution of Chief Court and appointment and tenure of Judges.

[Act XVII of 1877, s. 6.]

6. The Judges of the Chief Court shall have rank and precedence according to the seniority of their appointments as such Judges: Rank and precedence of Judges of Chief Court.

Provided that a Judge permanently appointed shall be deemed senior to an officiating Judge.

7. *(1)* Each Divisional Court shall consist of two or more Judges who shall be appointed by the Local Government, and may be transferred, suspended or removed by the Local Government. Constitution of Divisional Courts.

(2) The Commissioner of a Division may be appointed Judge of a Divisional Court, in addition to his other duties.

8. *(1)* When the Commissioner of a Division is one of the Judges of a Divisional Court, he shall be deemed the Senior Judge of the Court. Seniority of Judges of a Divisional Court.

(2) The seniority of the other Judges shall be regulated by the seniority of their appointments as Judges of a Divisional Court:

Provided that a Judge permanently appointed shall be deemed senior to an officiating Judge.

9. *(1)* The Assistant Judges and the Subordinate Judges of the first class shall be appointed, and may be transferred, suspended or removed, by the Local Government. Appointment of Assistant Judges and Subordinate Judges.

(2) The Subordinate Judges of the second, third and fourth classes shall be appointed, and may be transferred, suspended or removed, by the Chief Court, subject to the control of the Local Government, and to rules which the Local Government is hereby empowered to make as to the qualifications of persons to be appointed to the office of Subordinate Judge.

(3) The present Munsifs shall be deemed to have been duly appointed, and shall be, Subordinate Judges under this Act, and their classification as Subordinate Judges of the second, third or fourth class shall be determined by the Chief Court.

[Act XVII of 1877, s. 7.]

10. Every person appointed under this Act to be or to act as Judge of a Divisional Court, Assistant Judge or Subordinate Judge shall, within the local limits of the jurisdiction of the Court to which he may, from time to time, be posted, have the powers of a Judge of a Divisional Court, of the Court of an Assistant Judge, or of the Court of a Subordinate Judge of the fourth class, as the case may be. Certain powers to be exercised *ex officio*.

[Act XVII of 1877, s. 8.]

11. *(1)* The Local Government may, from time to time, confer upon any Deputy Commissioner or Assistant Commissioner the powers of an Assistant Judge, or upon any Assistant Commissioner the powers of a Subordinate Judge of any class, or upon any Subordinate Judge not being an Assistant Commissioner the powers of a Subordinate Judge of the second or of the third class, or upon any Tahsíldár or Náib Tahsíldár the powers of a Subordinate Judge of the third or of the fourth class, and may withdraw any powers so conferred. Deputy Commissioners, Assistant Commissioners, Subordinate Judges, Tahsíldárs and Naib Tahsíldárs may be invested with powers.

(2) Any officer invested with powers under this section may exercise such powers in any district or sub-division of a district to which he may, from time to time, be posted.

[Act XVII of 1877, s. 9.]

12. The Local Government may, from time to time, confer upon any person all or any of the powers of a Court of any of the five grades last mentioned in section 4, and may withdraw any powers so conferred. Any person may be invested with certain powers.

[Act XVII of 1877, s. 10.]

13. *(1)* The Local Government may direct any three or more persons invested with powers of the same description under section 12 to sit together as a bench; and those powers shall, while such direction remains in force, be exercised by the bench so constituted, and not otherwise. Exercise of such powers by benches.

(2) The decision of the majority of the members of a bench constituted under this section shall be deemed to be the decision of the bench.

[Act XVII of 1877, s. 11.]

14. Except for the purpose of exercising control over any other Court, any person or any bench exercising the powers of a Court of any grade under section 12 or section 13 shall be deemed to be a Court of such grade for all the purposes of this Act. Persons and benches exercising such powers to be deemed Courts of corresponding grades.

[Act XVII of 1877, s. 12.]

15. Any person or bench invested under section 11, section 12 or section 13 with the powers of a Court of any grade shall exercise such powers and discharge the functions of such Court within such local limits and in such classes of cases as the Local Government may, from time to time, direct. Such powers where and in what cases to be exercised.

[Act XVII of 1877, s. 13.]

16. The Local Government may, from time to time, by notification in the official Gazette, fix the local limits of the jurisdiction of any Court of any of the six grades last mentioned in section 4. Power to alter local limits of jurisdiction.

The Panjáb Courts Bill, 1884.
(Chapter III.—Of the Jurisdiction and Powers of the Chief Court.—Sections 17-24.)

CHAPTER III.

OF THE JURISDICTION AND POWERS OF THE CHIEF COURT.

[Act XVII of 1877, s. 14.]

17. The Chief Court shall be deemed, for the purposes of all enactments for the time being in force, to be the highest Civil Court of appeal in the territories to which this Act extends.

Civil appeals from subordinate Courts.

[Act XVII of 1877, s. 15; *Cf.* Crim. Pro. Code, ss. 4 (*i*) and 266.]

18. The Chief Court shall be the highest Court of criminal appeal or revision in the said territories, and shall have power, as a Court of original jurisdiction, to try European British subjects committed to it for trial.

Criminal, appellate and revisional jurisdiction.

Power to try European British subjects.

[Act XVII of 1877, s. 16; Civil Pro. Code, s. 20.]

19. The Chief Court may, on the application of any of the parties, after giving notice to the parties and hearing such of them as desire to be heard, or of its own motion, without giving such notice, withdraw any suit or other civil proceeding instituted in any Court under its superintendence or control, and try or dispose of such suit or proceeding itself, or transfer the same for trial or disposal to any other Court under its superintendence or control and competent to try or dispose of such suit or proceeding in respect of its nature and the amount or value of its subject-matter.

Power to withdraw and try, or to transfer, suits.

[Act XVII of 1877, s. 17.]

20. Except as otherwise provided by any law for the time being in force, an appeal shall lie from any decree or order passed or made by the Chief Court—

Appeals from original jurisdiction of Chief Court.

(*a*) in exercise of the original jurisdiction conferred by section 19; or

(*b*) in exercise of any other original jurisdiction of a civil nature to which the Chief Court may by rule extend this section:

Provided that such appeal shall lie only in the cases and in manner following (that is to say):—

(*c*) when such decree or order is made by a single Judge, an appeal shall lie, either to a bench consisting of two other Judges, or to the full bench, as the Court may, by general rule or special order, from time to time, direct;

(*d*) when such decree or order is made by a bench of Judges not being the full bench, and such Judges differ in opinion, the appeal shall lie from such decree or order to the full bench.

[Act XVII of 1877, s. 19, extended to Divisional Courts.]

21. *(1)* Except as by this Act or by any other enactment for the time being in force otherwise provided, the Chief Court may make rules to provide in such manner as it thinks fit for the exercise by one or more of its Judges of any powers conferred on it, and for the exercise by one or more of the Judges of a Divisional Court of any of the powers conferred on that Court by this Act, or by any other enactment for the time being in force:

Delegation of powers to its members.

Provided that no order not being an interlocutory order, and no decree, sentence or decision of any Court, shall be reversed by any Judge of the Chief Court or of a Divisional Court sitting alone.

Proviso.

(2) When the Chief Court consists of more than three Judges, it may make rules declaring what number of Judges, not being less than three, shall constitute a full bench of the Court, and may by these rules prescribe the mode of determining what Judges shall sit as a full bench, when a full bench sitting becomes necessary.

(3) The Chief Court may, from time to time, delegate to one of its Judges the power of determining, subject to any rules made under this section, what Judge in each case shall sit alone and what Judges of the Court shall constitute any bench of Judges. [See 24 & 25 Vic., cap. 104, s. 14.]

[Act XVII of 1877, s. 20.]

22. When there is a difference of opinion among the Judges composing any bench of the Chief Court on any question arising before such Judges in the exercise by them of any powers conferred on such Court by this Act, or by any other enactment for the time being in force, such question shall, except as otherwise provided by any enactment for the time being in force, be decided as follows, that is to say:

Rule of decision when Judges differ.

If the number of such Judges concurring in one opinion upon such question is larger than the number holding any other opinion upon such question, the decision shall be in accordance with the opinion of such larger number.

If the numbers of such Judges holding two or more opinions on such question are equal, the following rules shall be observed, that is to say:—

(*a*) if such bench is the full bench, or is exercising any original jurisdiction to which section 20 applies or is extended, the decision upon such question shall be in accordance with such one of these opinions as is held by the Judge who has precedence under section 6;

(*b*) in other cases the bench before which such question has arisen shall refer the same to the full bench, and the full bench shall decide the same in accordance with the rules hereinbefore contained, and the case in which such question has arisen shall be disposed of by the bench referring such question in accordance with the decision of the full bench thereon.

[Act XVII of 1877, s. 21.]

23. *(1)* Any single Judge of the Chief Court or any bench of Judges of such Court (not being the full bench) exercising any powers conferred on the Chief Court by this Act or by any other enactment for the time being in force may refer for the decision of the full bench any question of law or custom having the force of law, or the construction of any document, or the admissibility of any evidence arising before such Judge or bench of Judges.

Power to refer question to full bench.

(2) Any Judge or bench making a reference on any question in any case under this section shall dispose of such case in accordance with the decision of the full bench on such question.

[Act XVII of 1877, s. 22.]

24. *(1)* The Chief Court may, from time to time, appoint a Registrar and Deputy Registrar and such other ministerial officers as may be necessary for the administration of justice by such Court, and for the exercise and performance of the powers and duties conferred and imposed on it by this Act.

Power to appoint ministerial officers.

(2) The appointment of the Registrar shall be subject to the sanction of the Local Government.

The Panjáb Courts Bill, 1884.
(Chapter IV.—Of the Jurisdiction and Powers of the Subordinate Courts.—Section 34.)

[Act XVII of 1877, s. 23.]

25. The officers so appointed shall exercise such powers and discharge such duties of a ministerial nature as the Chief Court may, from time to time, direct.

Powers and duties of such officers.

[Act XVII of 1877, s. 24.]

26. Any such officer may be suspended or dismissed from his office by order of the Chief Court:

Suspension and dismissal of such officers.

Provided that neither the Registrar nor the Deputy Registrar shall be dismissed without the previous sanction of the Local Government.

[Act XVII of 1877, s. 25.]

27. The general superintendence and control over all Courts of the six grades last mentioned in section 4, and over all Courts of Small Causes, shall be vested in, and such Courts shall be subordinate to, the Chief Court.

Superintendence and control of subordinate Courts.

[Act XVII of 1877, s. 26.]

28. *(1)* The Chief Court may, from time to time, make rules—

Power to make rules as to petition-writers.

(*a*) declaring what persons shall be permitted to practise as petition-writers in the Courts of the Panjáb;

(*b*) regulating the conduct of persons so practising.

(2) Whoever breaks any rule made under this section and having the force of law shall be liable, on conviction before a Magistrate, to a fine which may extend to fifty rupees.

[Act XVII of 1877, s. 27; see also Criminal Procedure Code, s. 553, and Civil Procedure Code, s. 652.]

29. The Chief Court may, from time to time,—

Power to make rules as to other matters.

(*a*) make rules consistent with this Act conferring and imposing on the ministerial officers of the Courts subject to its superintendence such powers and duties of a ministerial nature as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed;

(*b*) make rules consistent with this Act to determine in what cases pleaders practising in such Courts shall be permitted to address such Courts in English;

(*c*) prescribe forms for seals to be used by such Courts;

(*d*) prescribe forms for such books, entries, statistics and accounts as it thinks necessary to be kept, made or compiled in such Courts or submitted to any authority;

(*e*) make rules consistent with this Act providing for the inspection of such Courts and the supervision of the working thereof;

(*f*) make such rules consistent with this Act, institute such enquiries and submit such recommendations to the Local Government as it may think fit, with a view to promoting the efficiency of the judicial and ministerial officers of such Courts and maintaining proper discipline among such officers.

[Act XVII of 1877, s. 28.]

30. *(1)* The Chief Court shall keep such registers, books and accounts as may be necessary for the transaction of the business of the Court, and shall submit to the Local Government such of the same registers, books and accounts, and statements of the work done in the Court, as may, from time to time, be required by the said Government.

Registers, books, accounts and statements to be kept and furnished by Chief Court.

(2) The Chief Court shall also comply with such requisitions as may, from time to time, be made by the Governor General in Council, or by the Local Government, for certified copies of, or extracts from, the records of the Courts.

[Sec. 29, Act XVII of 1877, and ss. 638 and 639, Civ. Pro. Code.]

31. *(1)* The Chief Court, when sitting as a Court of civil judicature, shall take evidence and record judgments and orders in such manner as it, by rule, from time to time, directs, and may, from time to time, frame forms for any proceeding in that Court in the exercise of its civil jurisdiction.

Chief Court to take evidence and record judgments according to its own rules, and to frame forms for proceedings.

(2) The following provisions of the Civil Procedure Code shall not apply to the Chief Court in the exercise of its original civil jurisdiction, namely, sections 119, 182 to 185 (both inclusive), 187, 189 to 191 (both inclusive), 192 (so far as it relates to the manner of taking evidence), 198, 200 to 204 (both inclusive), and so much of section 409 as relates to the making of a memorandum; XIV of 1882.

And sections 571 to 573 (both inclusive), 554 (so far as it relates to the time of dating and signing judgment) and 579 shall not apply to the Chief Court in the exercise of its appellate jurisdiction.

[Act XVII of 1877, s. 29.]

32. *(1)* Any non-judicial or quasi-judicial act which the Civil Procedure Code requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code, may be done by the Registrar of the Court, or by such other officer of the Court as the Court may direct to do such act. XIV of 1882.

Non-judicial acts may be done by Registrar.

(2) The Chief Court may, from time to time, by rule, declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

[New. Cf. s. 199, Civ. Pro. Code.]

33. When any appeal, reference or case heard in the exercise of revisional jurisdiction has been heard by a bench consisting of two or more Judges, a judgment or dissent written by any member of the bench, but not pronounced, may be delivered by any other member of that bench,

Delivery of judgment in the absence of Judge who recorded it.

CHAPTER IV.

OF THE JURISDICTION AND POWERS OF THE SUBORDINATE COURTS.

[Sec. 30, Act XVII of 1877.]

34. Subject to the general superintendence and control of the Chief Court—

Controlling powers of Divisional Court and of Assistant Judges.

every Divisional Court shall control (*a*) the Courts of all Assistant Judges or officers invested with the powers of an Assistant Judge within its division, and (*b*) the Courts controlled by the Assistant Judges or Deputy Commissioners invested with the powers of an Assistant Judge within its division;

and, subject to the control of the Divisional Court—

every Assistant Judge and every Deputy Commissioner invested with the powers of an Assist-

The Panjáb Courts Bill, 1884.
(Chapter IV.—Of the Jurisdiction and Powers of the Subordinate Courts.—Sections 35-41.)

ant Judge shall control (*a*) all Courts of the four grades last mentioned in section 4, and all Courts of Small Causes, and (*b*) all Courts of persons other than the Deputy Commissioner of a district invested under section 11 or section 12 with the powers of an Assistant Judge within the area subject to his jurisdiction.

Principal Court of original jurisdiction.

35. Except as otherwise provided by any enactment for the time being in force, the Divisional Court shall be deemed to be the District Court or principal civil Court of original jurisdiction in its division:

Provided that the Local Government may empower any Assistant Judge or any Deputy Commissioner invested with the powers of an Assistant Judge to exercise all or any of the powers of a District Court within the area subject to his jurisdiction.

[Act XVII of 1877, s. 32.]

36. Except as otherwise provided by any enactment for the time being in force—

No pecuniary limits of jurisdiction of Divisional Court or of Assistant Judge.

(1) the Divisional Court, and *(2)* the Court of the Assistant Judge, shall have jurisdiction for the adjudication of original civil suits without limit as regards the amount or value of the subject-matter of such suits; and

Pecuniary limits of jurisdiction of other Courts.

each of the Courts mentioned in the first column of the subjoined table shall have jurisdiction for the adjudication of civil suits when the amount or value of the subject-matter of such suits does not exceed the limit prescribed for such Court in the second column of the table:—

COURT.	Limit of jurisdiction.
	Rs.
(*a*)—The Court of the Subordinate Judge of the first class.	5,000
(*b*)—The Court of the Subordinate Judge of the second class.	1,000
(*c*)—The Court of the Subordinate Judge of the third class.	500
(*d*)—The Court of the Subordinate Judge of the fourth class.	100

[Section 38, Act XVII of 1877.]

Powers of Divisional Court and of Court of Assistant Judge.

37. *(1)* Any Divisional Court or any Assistant Judge, or Deputy Commissioner invested with the powers of Assistant Judge, may exercise, as regards the Courts under its or his control, the same powers of withdrawal, trial, disposal and transfer as are conferred by section 19 on the Chief Court.

(2) The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(3) The Local Government may, from time to time, confer upon any Assistant Commissioner the powers of an Assistant Judge under this section, and withdraw the same.

[Section 34, Act XVII of 1877, and Act XIV of 1882.]

Power to distribute business.

38. Notwithstanding anything contained in the Code of Civil Procedure, every Divisional Court, Assistant Judge or Deputy Commissioner invested with the powers of Assistant Judge may, by written order, direct that any civil business cognizable by it or his Court and the Courts under its or his control (including the execution of decrees) shall be distributed among such Courts in such manner as it or he thinks fit:

Provided that no direction issued under this section shall empower any Court to exercise any jurisdiction in any suit of which the amount or value of the subject-matter exceeds its proper jurisdiction:

Provided also that no such direction shall be inconsistent with any direction or notification issued by the Local Government under section 15 or 16.

[Section 35, Act XVII of 1877.]

Ministerial officers of subordinate Courts.

39. *(1)* The ministerial officers of the Divisional Court and of the Courts of Assistant Judges and Courts of Small Causes shall be appointed, and may be suspended and dismissed, by the Judges of those Courts respectively, whose orders in such matters shall, in the case of a Divisional Court, be final, and in the case of any other Court be subject to the general control of the Divisional Court.

(2) The ministerial officers of all Courts controlled by an Assistant Judge, other than a Court of Small Causes, shall be appointed, and may be suspended and dismissed, by the Assistant Judge, subject to the general control of the Divisional Court.

(3) Every appointment under this section shall be subject to such rules as the Local Government, from time to time, prescribes in this behalf.

[Act XVII of 1877, s. 36.]

Power to fine ministerial officers.

40. *(1)* The Judge or presiding officer of every Court under the control of an Assistant Judge may fine, in an amount not exceeding one month's salary, any of the ministerial officers of such Court who is guilty of misconduct or neglect in the performance of the duties of his office.

(2) The Assistant Judge, subject to the general control of the Divisional Court, may, on appeal or otherwise, reverse or modify any such order made by any such Judge or officer, other than a Judge of a Court of Small Causes; and may of his own motion fine up to the amount of one month's salary any ministerial officer of any Court under his control other than a Court of Small Causes.

(3) Any Divisional Court or Assistant Judge, and the Judge of any Court of Small Causes, may fine any ministerial officer of his Court in an amount not exceeding one month's salary.

[New. *Cf.* Act VI of 1871, s. 29, and Act XVII of 1879, s. 24.]

Power to invest with Small Cause Court jurisdiction.

41. The Local Government may invest, within such local limits as it, from time to time, fixes, any Assistant Judge or Subordinate Judge of the first class with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of five hundred rupees, and any Subordinate Judge of the second or third class with similar jurisdiction up to the amount of fifty rupees; and may, whenever it thinks fit, withdraw the jurisdiction so conferred.

The Panjáb Courts Bill, 1884.
(Chapter V.—Of Appellate Jurisdiction in Civil Cases.—Sections 42-47.)
(Chapter VI.—Of Revenue Courts.—Section 48.)

CHAPTER V.

OF APPELLATE JURISDICTION IN CIVIL CASES.

First appeals to whom to lie.

42. *(1)* Appeals from the decrees and orders of a Court of any of the three grades last mentioned in section 4 in suits of the nature cognizable in Courts of Small Causes, and in suits of any other class which the Chief Court, with the sanction of the Local Government, may, from time to time, determine to place on the same footing, shall, when such appeals are allowed by law, and the value or amount of the subject-matter of the suit does not exceed five hundred rupees, lie to the Court of the Assistant Judge.

(2) Appeals from the decrees and orders of the Court of the Assistant Judge in original suits, when the amount or value of the subject-matter of the suit exceeds five thousand rupees, and appeals from the decrees and orders of the Divisional Court in original suits, shall, when such appeals are allowed by law, lie to the Chief Court.

(3) Appeals from decrees and orders in original suits not hereinbefore provided for shall, when such appeal is allowed by law, lie to the Divisional Court.

Further appeal to lie to the Chief Court on the certificate of the Divisional Court that the case is a fit one for further appeal.

43. When two Judges of a Divisional Court are unable to concur in a judgment varying or reversing the decree or order appealed against, or when some question of law or custom, or of general interest, is involved, the Judges may, if they regard the case as of sufficient importance to justify a further appeal, or if, when the certificate is applied for, one of the Judges who passed the decree is no longer attached to the Court, the remaining Judge may, if he regards the case as of sufficient importance to justify a further appeal, grant a certificate to any party to the appeal that the case is a fit one for a further appeal; and on such certificate being granted a further appeal shall lie to the Chief Court from the decree or order of the Divisional Court on any ground which would be a good ground of appeal if the decree or order had been passed in an original suit:

Provided that no further appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, or other suit placed on the same footing under section 42 when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

XIV of 1882.

Appellate decision of Assistant Judge or Divisional Court otherwise final.

44. Subject to the provisions of section 43, and of the Code of Civil Procedure, sections 595 and 622, the decision of the Court of the Assistant Judge or of the Divisional Court passed in appeal shall be final.

[*Cf.* Act XIII of 1879, s. 23.]

Appeals from decrees, &c., passed before Act comes into force.

45. For the purposes of sections 42 and 23, all decrees, orders and decisions passed before the date on which this Act comes into force shall be deemed—

(*a*) if passed by a Commissioner or Additional Commissioner, or by the Civil Judge of Peshawar, to have been passed by the Divisional Court;

(*b*) if passed by a Deputy Commissioner or other officer invested with the appellate jurisdiction of a Deputy Commissioner, to have been passed by an Assistant Judge;

(*c*) if passed by an Assistant Commissioner with full powers, to have been passed by a Subordinate Judge of the first class;

(*d*) if passed by an Assistant Commissioner not invested with full powers or with the appellate powers of a Deputy Commissioner, or by an Honorary Civil Judge, or by a Tahsíldár or Náib Tahsíldár, to have been passed by a Subordinate Judge of the second, third or fourth class:

Provided that—

(1) no right of appeal which has accrued under the existing law shall be taken away, and no certificate shall be required for a further appeal;

(2) if the amount or value of the subject-matter of the suit exceeds five thousand rupees, the appeal, if any is allowed by law, shall lie to the Chief Court; but in other cases in which the appeal now lies to the Commissioner's Court, the appeal shall lie to the Divisional Court.

[Act XVII of 1877, s. 40.]

Period of limitation.

46. *(1)* The period of limitation for an appeal under section 41 or section 42 shall run from the date of the decree, order or decision appealed against, and shall be as follows, that is to say:—

(*a*) when such appeal lies to the Court of the Assistant Judge or to the Divisional Court—sixty days;

(*b*) when such appeal lies to the Chief Court—ninety days.

(2) In computing such periods of sixty and ninety days, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

XV of 1877.

[Act XVII of 1877, s. 41.]

Power to withdraw and try or to transfer appeal.

47. The Chief Court, the Divisional Court or the Court of an Assistant Judge may, on the application of any of the parties, after giving notice to the parties and hearing such of them as desire to be heard, or of its own motion, without giving such notice, withdraw any civil appeal pending in any Court under its superintendence or control, and try such appeal itself, or transfer the same for trial to any other Court under its superintendence or control and of a grade equal or superior to that of the Court from which such appeal is withdrawn.

CHAPTER VI.

OF REVENUE COURTS.

Certain classes of suits cognizable by Revenue Courts only.

48. Suits of any of the following classes instituted on and after the first day of October, 1884, shall be heard and determined in Revenue Courts and not otherwise:

(*a*) suits by tenants to establish a claim to a right of occupancy under Chapter II of the Panjáb Tenancy Act, 1868;

XVIII of 1868.

(*b*) suits by landlords under section 6 of the same Act to prove that a tenant presumed to have a right of occupancy under that section has no such right;

(*c*) suits for enhancement or abatement of rent under Chapter III of the same Act;

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(Chapter VI.—Of Revenue Courts.—Sections 49-55.)

(*d*) suits for ejectment of a tenant under Chapter IV of the same Act;

(*e*) suits under section 25 of the same Act to contest liability to be ejected when notice of ejectment has been served;

(*f*) suits under section 40 of the same Act to determine the amount or value of the compensation to be paid or the terms of a lease to be granted to a tenant under section 39 of the same Act, or both;

(*g*) suits for arrears of rent on account of land, or on account of any rights of pasturage, forest-rights, fisheries or the like;

(*h*) suits for the recovery of any over-payment of rent;

(*i*) suits by lambardárs for arrears of land-revenue, payable through them by the co-sharers, or for village-expenses or other dues for which the co-sharers may be responsible to the lambardár;

(*j*) suits by co-sharers for their share of the profits of an estate or part thereof after payment of the land-revenue and village-expenses, or for a settlement of accounts;

(*k*) suits by assignees of land-revenue for arrears of revenue due to them as such;

(*l*) suits by superior proprietors for arrears of revenue due to them as such; and

(*m*) suits under section 9 of the Specific Relief Act to recover possession of land assessed to the land-revenue or liable to be so assessed, or of which the land-revenue has been wholly or in part released, compounded for, redeemed or assigned. I of 1877.

49. If in any suit of any of the classes mentioned in clauses (*a*) to (*l*) of the last preceding section it appears that the parties are at issue on any question of proprietary title, or on the question of the existence of the relation of landlord and tenant between them, the Revenue Court shall not determine such question, but may either proceed to decide the case by passing a decree contingent upon the determination of such question by a Civil Court, giving such directions as it may think proper as to the party with whom it shall rest to institute a suit for the purpose, or, on the application of either party, may stay proceedings to enable the party applying to institute a suit for the purpose in a Civil Court; but the proceedings shall not be stayed under this section for more than three months unless such suit is in the meantime instituted; nor, when a decree has been passed contingent upon the determination of such question by a Civil Court, shall any execution be issued, property sold or person ejected or imprisoned thereunder until the receipt of a copy of the judgment of the Civil Court on the question, unless the decree has been passed against the party whose duty it is to sue and he fails to institute the suit for more than three months from the date of the decree.

Procedure when question of proprietary title or of existence of relation of landlord and tenant arises.

50. All Assistant Commissioners and Tahsíldárs shall have power to try suits of the classes mentioned in section 48, clauses (*g*), (*i*), (*k*) and (*l*), when the amount or value of the claim does not exceed one hundred rupees; and the Local Government may invest Náib Tahsíldárs with the same powers.

Certain revenue powers of Assistant Commissioners and Tahsíldárs to be exercised *ex officio*.

51. The Local Government may invest any Assistant Commissioner or Tahsíldár with power to try all suits of the classes mentioned in the same section, clauses (*d*) and (*f*) to (*m*), both inclusive.

Additional powers with which Assistant Commissioners and Tahsíldárs may be invested.

52. The Deputy Commissioner shall have power to try suits of any of the classes mentioned in section 48, and the Local Government may specially invest any Assistant Commissioner with the powers of a Deputy Commissioner for the trial of suits of the classes mentioned in clauses (*a*), (*b*), (*c*) and (*e*) of the same section.

Revenue powers of Deputy Commissioners and power to invest Assistant Commissioners therewith.

53. *(1)* The Local Government may, with the previous sanction of the Governor General in Council, make rules consistent with this Act for regulating the procedure of Revenue Courts in cases under this chapter for which a procedure is not prescribed thereby; 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 Courts. [*Cf.* Act XVIII of 1881, s. 19.] XIV of 1882.

Procedure of Revenue Courts how to be regulated.

(2) Until such rules are made, Revenue Courts shall be guided in cases under this chapter by the provisions of the Code of Civil Procedure, section 2, Part I, except Chapters XVI and XX, Parts II, III and IV, Chapters XXXVII and XXXVIII, XLI, XLIII and XLIV, and Parts VIII and X, so far as applicable; and the Court of the Financial Commissioner shall, in respect of such cases, be deemed to be the High Court within the meaning of the said Code, and shall exercise, as regards the Courts under his control, the same powers of withdrawal, trial, disposal and transfer as are conferred by sections 19 and 47 on the Chief Court; and the Commissioner and Deputy Commissioner shall respectively exercise, as regards the Courts under his control, the same powers of withdrawal, trial, disposal and transfer as are conferred by sections 57 and 47 upon a Divisional Court and an Assistant Judge. XIV of 1882.

54. Every Commissioner or Deputy Commissioner may, by written order, direct that any business cognizable under this chapter by his Court, and the Courts under his control (including the execution of decrees) shall be distributed among such Courts in such manner as he thinks fit:

Power to distribute business.

Provided that no direction issued under this section shall empower any Court to exercise any jurisdiction which it is not empowered to exercise under section 50, section 51 or section 52.

55. All decisions and orders (except decisions and orders in suits under section 9 of the Specific Relief Act) of Assistant Commissioners not invested with the powers of a Deputy Commissioner under section 52, and of Tahsíldárs, shall be appealable to the Deputy Commissioner, whose order thereon shall be final, unless when the amount or value of the subject-matter exceeds one hundred rupees, when a I of 1877.

Cases appealable to Deputy Commissioner.

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(Chapter VI.—Of Revenue Courts.—Sections 56-64.)

further appeal shall lie to the Commissioner, or, in case the amount or value of the subject-matter exceeds five thousand rupees, to the Financial Commissioner.

Further appeal in certain cases.

56. *(1)* All decisions and orders of Deputy Commissioners and Assistant Commissioners invested with the powers of a Deputy Commissioner in suits of the classes mentioned in clauses (*a*), (*b*), (*c*) and (*e*) of section 48, and in other suits (except suits under section 9 of the Specific Relief Act) in which the value of the subject-matter exceeds one hundred rupees, shall be appealable to the Commissioner, or in case the amount or value exceeds five thousand rupees, to the Financial Commissioner. I of 1877.

Cases appealable to Commissioner or Financial Commissioner.

(2) In all other cases their judgments and orders shall be final.

Other judgments to be final.

57. An appeal from the decisions of the Commissioner on appeals in suits of the classes mentioned in clauses (*a*), (*b*), (*c*) and (*e*) of section 48 shall lie to the Financial Commissioner, unless when the Commissioner dismisses the appeal. All other judgments and orders of the Commissioner on appeals shall be final, subject to revision by the Financial Commissioner.

Further appeal to Financial Commissioner in certain cases.

Other judgments of Commissioner to be final.

58. The Financial Commissioner may at any time call for any case which has come before any Commissioner or any Court subordinate to him, and pass such orders thereon consistent with the law applicable thereto as he thinks fit.

Revisional jurisdiction of Financial Commissioner.

59. *(1)* The period of limitation for an appeal under section 55, section 56 or section 57 shall run from the date of the decree, order for decision appealed against, and shall be as follows, that is to say:—

Limitation of appeals under this chapter.

(*a*) when such appeal lies to the Court of the Deputy Commissioner or of the Commissioner—sixty days;

(*b*) when such appeal lies to the Financial Commissioner—ninety days.

(2) In computing such periods of sixty and ninety days, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877. XV of 1877.

60. Subject to the general superintendence and control of the Financial Commissioner, every Commissioner shall control the Revenue Courts of all Deputy Commissioners and the Revenue Courts controlled by Deputy Commissioners within his Division; and

Controlling powers of Financial Commissioner, Commissioner and Deputy Commissioner.

subject to the control of the Commissioner, every Deputy Commissioner shall control the Revenue Courts of all Assistant Commissioners and Tahsíldárs and officers invested with the powers of Deputy Commissioner, Assistant Commissioner or Tahsíldár within his District.

61. Except for the purpose of exercising control over any other Revenue Court, any person exercising the powers of a Revenue Court of any grade under section 49 or section 51 shall be deemed to be a Court of such grade for all the purposes of this Act, and shall exercise such powers and discharge the functions of such Court within such local limits and in such classes of cases as the Local Government may, from time to time, direct.

Persons invested with powers under this chapter to be deemed to be Courts of corresponding grades, and where and in what cases to exercise their powers.

62. When more than one Financial Commissioner is appointed, the Local Government may, from time to time, make rules as to the distribution of revenue, judicial and other business between the persons so appointed; and, until such rules are made, the Financial Commissioner who is senior in respect of his appointment as such may transfer such business as he thinks fit to the other Financial Commissioner for disposal, and may withdraw and himself dispose of any business so transferred and not disposed of.

Distribution of business between Financial Commissioners.

63. If either Financial Commissioner desires to obtain the opinion of the other upon any question arising in any appeal under this chapter pending before him, he may forward the record to the other Financial Commissioner with a statement of the question upon which he desires his opinion; and the latter, after such examination and such hearing (if any) as he thinks fit, shall record his opinion upon the question referred to him; and the Financial Commissioner who made the reference shall proceed to dispose of the appeal after considering the opinion so obtained.

Consultation between Financial Commissioners.

64. *(1)* The Local Government may, from time to time, by notification in official Gazette, declare that a settlement of land-revenue is in progress in any local area, and invest any officer making or controlling such settlement, either by name or in virtue of his office, with all or any of the powers of any Court constituted under this Act for the purpose of trying all or any specified class of suits and appeals relating to land, or the rent, revenue or produce of such land, arising in such local area. [Act XVII of 1877, s. 46.]

Power to invest Settlement-officers with powers of Civil or Revenue Courts in certain cases.

(2) The publication of any notification under this section shall be conclusive evidence that a settlement of land-revenue is in progress in the local area to which the notification refers.

(3) The Local Government may cancel any such notification.

(4) While such notification continues in force, such powers shall be exercised by the officers so invested, and not otherwise:

Provided that the Local Government may, by order published in the official Gazette, direct that any jurisdiction with which any officer may have been invested by such notification shall be exercised solely by the Court by which such jurisdiction would have been exercised if such notification had not been published:

Provided also that any cases pending before any officer under such notification when it is cancelled may, notwithstanding such cancellation, be

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(Chapter VII.—Miscellaneous and Supplementary Provisions.—Sections 65-73.)

disposed of by him as if it continued in force, unless the Local Government directs (as it is hereby empowered to do) that such cases shall be transferred for disposal to the Court by which they would have been disposed of if such notification had not been published.

Explanation.—In this section "land" means land assessed to the land-revenue or whereof the land-revenue has been wholly or in part released, compounded for, redeemed or assigned, and all land the property of Government not within the site of any town or village.

[Act XVII of 1877, s. 50.] **65.** Power to alter subordination of Courts for purposes of section 64. For the purposes of section 64 the Local Government may, notwithstanding anything in this Act, from time to time direct that any of the Courts mentioned in this Act (except the Chief Court) shall, in respect of any specified class of cases, be subordinate to, or subject to the control or superintendence of, any authority other than those specified in this Act.

CHAPTER VII.

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS.

[Act XVII of 1877, s. 46; compare Act VI of 1871, s. 25; Act XVII of 1875, s. 19; and Act XIII of 1879, s. 23.] **66.** Presiding Officer of Court not to try certain suits and appeals. *(1)* Except with the consent of the parties, no presiding officer of any Court having jurisdiction under this Act shall try any suit or appeal to which he is a party or in which he is personally interested, or any appeal against a decree or order passed by himself, or shall adjudicate upon any proceeding connected with or arising out of such suit or appeal.

(2) When any such suit, appeal or proceeding comes before him, he shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

(3) The superior Court shall thereupon dispose of the case in the manner prescribed by section 25 of the Code of Civil Procedure. XIV of 1882.

[Act XVII of 1877, s. 47.] **67.** Rules when to have force of law. All rules made and forms prescribed under section 28 and section 29, clauses (*a*), (*b*), (*d*) and (*e*), shall be submitted for sanction to the Local Government, and, on receiving such sanction, shall be published in the official Gazette, and shall thereupon have the force of law.

[Act XVII of 1877, s. 48.] **68.** Local Government may transfer power conferred by section 27 to a single Judge. *(1)* The Local Government may, from time to time, with the previous sanction of the Governor General in Council, by notification in the official Gazette, appoint a single Judge of the Chief Court to exercise the power of superintendence conferred on such Court by section 27, and may cancel such notification.

(2) While such notification continues in force, such power shall be exercised by the Judge appointed thereby, and not otherwise.

[*Cf.* Act XIII of 1879, s. 27.] IV of 1869. **69.** Jurisdiction under Divorce Act. For the purposes of the Indian Divorce Act, any Judge of the Divisional Court shall be deemed to be the District Judge throughout the Division over which that Court has jurisdiction.

[Act VI of 1871, s. 17; Act XIII of 1879, s. 38]. **70.** Vacations. *(1)* Subject to such orders as may, from time to time, be issued by the Governor General in Council, and to the approval of the Local Government, the Chief Court shall prepare a list of days to be observed in each year as close holidays in the Civil Courts subordinate thereto.

(2) Such list shall be published in the official Gazette, and the said days shall be observed accordingly.

71. Pending proceedings. *(1)* All cases or proceedings pending in any Civil Court on the first day of October, 1884, may be disposed of as if this Act had not been passed, unless the Chief Court directs (as it is hereby empowered to do) that such cases or proceedings shall be transferred for disposal to the Courts established under this Act which would have had jurisdiction if they had been in existence when such cases or proceedings were instituted.

(2) For the purposes of this section, all appeals in civil suits or proceedings pending on the said day shall—

(*a*) if preferred from the decrees, orders or decisions of Commissioners, Additional Commissioners or the Civil Judge of Peshawar be deemed to be appeals from the Divisional Court;

(*b*) if preferred from the decrees, orders or decisions of Deputy Commissioners or officers invested under section three of Act XIV of 1875 with the appellate powers of Deputy Commissioners, or with the full powers of an Assistant Commissioner, be deemed to be appeals from the Court of the Assistant Judge; and

(*c*) if preferred from the decrees, orders or decisions of Assistant Commissioners not invested with full powers, or with the appellate powers of Deputy Commissioners, or of Honorary Civil Judges not invested with the full powers of an Assistant Commissioner, or of Tahsíldárs or Náib Tahsíldárs, be deemed to be appeals from Subordinate Judges of the second, third or fourth class.

72. Explanation of sections 617 and 622, Civil Procedure Code. For the proposes of sections 617 and 622 of the Civil Procedure Code, the decree of an Appellate Court subordinate to the Chief Court shall be deemed to be final when no certificate permitting a further appeal to the Chief Court under section 13 has been granted, and a case decided by an Appellate Court in which no such certificate has been granted shall be deemed to be a case in which no appeal lies to the Chief Court. XIV of 1882.

73. Amendment of the first schedule annexed to the Court-fees Act, 1870. To the first schedule annexed to the Court-fees Act, 1870, the following shall be added:— VII of 1870.

NUMBER.		PROPER FEE.
3. Application to the Chief Court of the Panjáb for the exercise of its revisional jurisdiction under section 622 of the Code of Civil Procedure.	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.	Two rupees.
	When such amount or value exceeds twenty-five rupees.	The fee leviable on memorandum of appeal.

The Panjáb Courts Bill, 1884.
(Chapter VII.—Miscellaneous and Supplementary Provisions.—Sections 74-75.)

XIV of 1882. **74.** Refund of fee paid on application for revision. If the Chief Court, on an application under section 622 of the Civil Procedure Code, on which a fee has been paid under the last preceding section, sets aside or modifies the decree or order of a subordinate Court, or remands the case for a fresh decision, it may grant to the applicant a certificate authorizing him to receive back from the Collector the full amount of fee paid on the application, or any smaller amount which, with regard to the circumstances of the case, it may think proper to order to be refunded.

75. Saving of certain appointments, rules and forms, notifications, powers and orders. All appointments made under sections 5 and 22 of Act XVII of 1877, directions given under section 23, rules and forms prescribed under sections 26 and 27, and notifications published, powers conferred and orders issued under section 49, of the same Act, shall, so far as may be, be deemed to have been respectively made, given, prescribed, published, conferred and issued under this Act.

SCHEDULE.

ACTS REPEALED.

(*See section 2.*)

Number and year.	Title of Act.	Extent of repeal.
Act IV of 1869	The Indian Divorce Act.	So much of section 3 as defines "District Judge" in the Panjáb to mean the "Commissioner of a Division."
Act X of 1870	The Land Acquisition Act, 1870.	So much of section 3 as defines "Court" in the Panjáb to mean the "Commissioner of a Division."
Act XIV of 1875.	The Panjáb Judicial Administration Act, 1875.	So far as it relates to civil or criminal judicial powers.
Act XVII of 1877.	The Panjáb Courts' Act, 1877.	The whole.

STATEMENT OF OBJECTS AND REASONS.

AN essential portion of the scheme for the reorganization of the civil administration in the Panjáb, which has recently received the sanction of the Secretary of State for India, is to be found in the improvement of the judicial agency and the reform of the appellate system. The arrangements proposed for this purpose render necessary very large changes in the law under which the Panjáb Courts are now constituted (the Panjáb Courts Act, 1877), and the most convenient mode of giving effect to them appears to be to repeal that Act and re-enact its provisions with the necessary additions and modifications. This it is proposed to do by the present Bill.

2. The changes in the law which it is intended to make will now be noticed.

3. Chapter II deals with the constitution of the Courts. The present law confers the civil judicial powers of the Courts subordinate to the Chief Court upon the executive officers of Government from the Commissioner down to the Tahsíldár, though Act XIV of 1875 enables the Local Government to confer the powers of a Deputy Commissioner or of a Tahsíldár upon other persons, and under that Act civil judicial powers have been conferred upon a number of officers known as Judicial Assistants and Munsifs, whose functions are mainly, though not always exclusively, judicial. Similarly, the Civil and Sessions Judge of Peshawar and certain Additional Commissioners have been invested with the judicial powers of Commissioners under Act XVII of 1877. It is now proposed to relieve Commissioners and Deputy Commissioners, as a rule, of civil judicial functions, though they will continue to exercise jurisdiction in certain classes of cases which will be transferred from the Civil to the Revenue Courts, and they may also be invested with civil judicial powers where the judicial work is so light as not to require the creation of special Courts. Commissioners will likewise be, as a rule, relieved of the functions as Sessions Judges which now devolve upon them, but this can be done under the Criminal Procedure Code, without special legislation.

4. Special designations which do not imply the exercise of executive functions are accordingly given to the Courts subordinate to the Chief Court (section 4).

5. With a view to strengthen the Courts of appeal in order to admit of greater finality being given to appellate decisions, it is proposed that the Court immediately subordinate to the Chief Court should ordinarily consist of two Judges, and that, while one of these Judges may be enabled by rule to exercise certain of the powers of the Court, a single Judge should not have power in the exercise of his appellate jurisdiction to reverse any order other than an interlocutory order passed by any Court.

6. Power is also taken (in section 7) to appoint the Commissioner of a Division to be one of the Judges of a Divisional Court in addition to his other duties, as it is in contemplation to establish one of the Divisional Courts at Derá Ismaíl Khán, and only one Judge will be available for that Court unless the Commissioner of the Deráját Division is appointed as one of the Judges.

7. The appointment of Assistant Judges and Subordinate Judges of the first class by the Local Government, and of Subordinate Judges of the second, third and fourth classes, corre-

sponding to the present Munsifs, by the Chief Court, subject to rules to be made by the Local Government, is provided for by section 9. The Court of the Assistant Judge will replace the Court of the Deputy Commissioner or Judicial Assistant under the present law, and no provision has hitherto been made by law as to the authority by which Munsifs may be appointed or removed.

8. The other differences between Chapter II of the Bill and the corresponding chapter of Act XVII of 1877 follow upon those which have been already described.

9. The third chapter, which provides for the jurisdiction and powers of the Chief Court, only differs from the corresponding chapter of Act XVII of 1877 in that section 19, relating to the transfer of suits, is assimilated to section 25 of the Civil Procedure Code; section 21 is modified so as to enable the Chief Court to make rules for the exercise by one or more of the Judges of a Divisional Court of the powers of that Court, except as regards the reversal of decrees, sentences or decisions of any Court, to provide by rule for the constitution of a full bench of the Chief Court, and to delegate to one of its Judges the power of determining what Judges shall sit alone or as a bench of the Court, and power is also taken to enable a single Judge of the Chief Court or of a Divisional Court to reverse an interlocutory order; sections 31 and 32 replace the reference in section 29 of the present Act to sections 633 and 637 of the Civil Procedure Code, and add what is necessary of sections 638 and 639 of that Code; and section 33 provides for the delivery of the judgments of a bench of Judges by any Judge who was a member of that bench, in accordance with existing practice, and with the analogy of section 199 of the Civil Procedure Code.

10. Chapter IV relates to the jurisdiction and powers of Courts subordinate to the Chief Court. The Divisional Court is declared to be the principal Civil Court of original jurisdiction, but the Local Government is enabled to empower any Assistant Judge or Deputy Commissioner with the powers of an Assistant Judge to exercise any of the powers of a District Court, so as to obviate the inconvenience of unduly limiting the number of Courts which can exercise jurisdiction under certain laws, *e. g.*, Acts XL of 1858, XXVII of 1860 and IX of 1861.

11. While the jurisdiction of the Divisional Court and of the Court of the Assistant Judge is unlimited as respects the value or amount in litigation, thus corresponding with the jurisdiction now exercised by Commissioners and Deputy Commissioners, that of the Subordinate Judge of the first class is limited to Rs. 5,000 instead of Rs. 10,000, which is the limit of the present jurisdiction of an Assistant Commissioner with full powers, and that of other Subordinate Judges may extend either to Rs. 100, to Rs. 500 or to Rs. 1,000.

12. In section 41 power is taken to invest Assistant Judges or Subordinate Judges with the jurisdiction of a Small Cause Court Judge for the trial of suits cognizable by a Small Cause Court within certain limits of value or amount.

13. The other changes in Chapter IV are those which are rendered necessary by the alterations of the law already described.

14. Chapter V relates to appellate jurisdiction in civil cases. It embodies the modifications proposed in the appellate system with the view of restricting the right of appeal so far as it is considered that the improved organization of the Courts will admit of this. The second appeals allowed by the Code of Civil Procedure, and the further appeals allowed by the present Panjáb Courts Act are abolished, and the decisions of appellate Courts are made final, except that the Judges of a Divisional Court are enabled, when they differ as to the judgment which should be passed, or when some question of law or custom or of general interest is involved, if they think the case of sufficient importance to justify further appeal, to grant a certificate permitting a further appeal to the Chief Court.

15. Appeals to Assistant Judges are confined to suits not above Rs. 500 in value, either of the Small Cause Court class or of any other class which the Chief Court, with the sanction of the Local Government, may determine to put upon the same footing, and appeals in suits above Rs. 5,000 in value, as well as appeals from decrees of the Divisional Court, will, when allowed by law, lie to the Chief Court, all other appeals allowed by law lying to the Divisional Court.

16. Section 47, relating to the transfer of appeals, has been modified to the same extent as section 19.

17. Chapter VI, which deals with Revenue Courts, is new, having been rendered necessary by the transfer of certain classes of suits enumerated in section 48 from the Civil to the Revenue Courts. It provides for the jurisdiction and powers of these Courts, for their procedure, for appeals from their decisions, for the revisional jurisdiction of the Financial Commissioner, and the controlling powers of the Financial Commissioner, Commissioner and Deputy Commissioner, respectively, for the transfer of suits and appeals, and for the distribution of business between Financial Commissioners when more than one such officer is appointed, the sanction which has been given by the Secretary of State to the appointment of a second Financial Commissioner rendering a provision of this nature necessary. Sections 64 and 65 correspond with sections 49 and 50 of the present Act, enabling the Local Government to confer judicial powers upon Settlement-officers, the only addition being that the officer may be so empowered either by name or in virtue of his office.

18. Chapter VII contains miscellaneous and supplementary provisions, some of which correspond with sections 46 to 48 of the present Act. Of the others, section 69 provides that any Judge of the Divisional Court shall be deemed to be the District Judge throughout its jurisdiction for the purposes of the Indian Divorce Act; section 70 provides for vacations; and section 71 for proceedings pending when this Bill becomes law; section 72 interprets certain expressions in sections 617 and 622 of the Civil Procedure Code so as to prevent doubt as to the cases in which the revisional jurisdiction of the Chief Court may be exercised; section 73 amends the Court-fees Act so that the fee leviable on a memorandum of appeal, when it exceeds the fee leviable on a petition to the Chief Court, may be charged on an application to it for the exercise of its revisional jurisdiction under section 622 of the Civil Procedure Code; and section 74 enables the Court in certain cases to grant a certificate authorizing the refund of the fee so charged.

The 25th June, 1884.

D. G. BARKLEY.

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, JULY 12, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 25th June, 1884:—

No. 6 OF 1884.

A Bill to amend the Indian Salt Act, 1882.

XII of 1882.

WHEREAS it is expedient to exclude the Province of Sindh from the operation of those portions of the Indian Salt Act, 1882, which do not extend by their own operation to the whole of British India, and whereas it is also expedient to remove certain doubts which have been raised as to the meaning of the words "importation of salt" in section 27 of the same Act; It is hereby enacted as follows:—

Repeal of words "to the Province of Sindh" and "Province" in section 1 of Act XII of 1882.

1. From such day as the Governor of Bombay in Council, by notification in the official Gazette, fixes in this behalf, the words "to the Province of Sindh" and the word "Province," in paragraphs three and four respectively of section 1 of the Indian Salt Act, 1882, shall be repealed.

Amendment of section 27 of the same Act.

2. For the word "importation" in section 27 of the same Act, the word "bringing" shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

1. THE object of this Bill is to make two amendments in the Indian Salt Act, 1882.

2. It has been found that certain provisions of the Indian Salt Act, 1882, are not suitable to the circumstances of the Province of Sindh, to which they at present extend, and it is proposed to replace them by an enactment to be passed by the local legislature providing for the requirements of the whole Presidency of Bombay inclusive of Sindh. It is doubtful, however, whether this course can be adopted until the words in section 1 of the Act which bring the Province of Sindh within the operation of those provisions have been repealed. Those words are accordingly repealed by section 1 of the Bill, and, in order that the repeal may be made to operate from the date on which the proposed new Act of the local legislature comes into force, it is left to the Governor of Bombay in Council to fix the date from which the section shall have effect.

3. The object of the amendment made by section 2 of the Bill is to remove a doubt as to the meaning of section 27 of the Act, raised by a ruling of the Judicial Commissioner in Sindh, who has held that the words "importation of salt" in that section cover only the bringing in of salt as merchandize for the purposes of commerce and in merchantable quantities. The Bill substitutes for the word "importation" the word "bringing."

The 19th June, 1884.

A. COLVIN.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 25th June, 1884:—

No. 7 OF 1884.

THE PANJÁB COURTS BILL, 1884.

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SCHEDULE.—ACTS REPEALED.

A Bill to amend the Law relating to Courts in the Panjáb.

WHEREAS it is expedient to amend the law relating to Courts in the Panjáb; and whereas the Secretary of State for India in Council has given his previous sanction to the passing of this Act; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. *(1)* This Act may be called the Panjáb Courts' Act, 1884. (Short title.)

(2) It extends to all the territories for the time being under the administration of the Lieutenant-Governor of the Panjáb; and (Local extent.)

(3) It shall come into force on the first day of October, 1884. (Commencement.)

2. On and from that day the Acts mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column thereof. (Repeal of Acts.)

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

(1) "Assistant Judge" includes a Deputy Commissioner invested with the powers of an Assistant Judge.

(2) "Assistant Commissioner" includes Extra Assistant Commissioner.

(3) "Revenue Court" means the Court of a Financial Commissioner, of a Commissioner, of a Deputy Commissioner, of an Assistant Commissioner or of a Tahsíldár exercising jurisdiction in suits of any of the classes mentioned in section 48.

(4) "Interlocutory order" means an order not having the force of a decree under the Civil Procedure Code or any other enactment, nor being a judgment, order to give security, order of acquittal or order under the Code of Criminal Procedure for the disposal of property or the proceeds thereof, passed or made by a Criminal Court. XIV of 1882. X of 1882.

The Panjáb Courts Bill, 1884.
(Chapter II.—Of the Constitution of the Courts.—Sections 4-16.)

CHAPTER II.

OF THE CONSTITUTION OF THE COURTS.

4. Besides the Courts established under any other law for the time being in force, there shall be the following grades of Courts (namely) :— (Grades of Courts.)

(1) the Chief Court;
(2) the Divisional Court;
(3) the Court of the Assistant Judge;
(4) the Court of the Subordinate Judge of the first class;
(5) the Court of the Subordinate Judge of the second class;
(6) the Court of the Subordinate Judge of the third class;
(7) the Court of the Subordinate Judge of the fourth class.

[Act XVII of 1877, s. 5.]

5. The Chief Court shall consist of three or more Judges who shall be appointed by the Governor General in Council, and shall hold their offices during his pleasure, and of whom one at least shall always be a barrister of not less than five years' standing. (Constitution of Chief Court and appointment and tenure of Judges.)

[Act XVII of 1877, s. 6.]

6. The Judges of the Chief Court shall have rank and precedence according to the seniority of their appointments as such Judges: (Rank and precedence of Judges of Chief Court.)

Provided that a Judge permanently appointed shall be deemed senior to an officiating Judge.

7. *(1)* Each Divisional Court shall consist of two or more Judges who shall be appointed by the Local Government, and may be transferred, suspended or removed by the Local Government. (Constitution of Divisional Courts.)

(2) The Commissioner of a Division may be appointed Judge of a Divisional Court, in addition to his other duties.

8. *(1)* When the Commissioner of a Division is one of the Judges of a Divisional Court, he shall be deemed the Senior Judge of the Court. (Seniority of Judges of a Divisional Court.)

(2) The seniority of the other Judges shall be regulated by the seniority of their appointments as Judges of a Divisional Court:

Provided that a Judge permanently appointed shall be deemed senior to an officiating Judge.

9. *(1)* The Assistant Judges and the Subordinate Judges of the first class shall be appointed, and may be transferred, suspended or removed, by the Local Government. (Appointment of Assistant Judges and Subordinate Judges.)

(2) The Subordinate Judges of the second, third and fourth classes shall be appointed, and may be transferred, suspended or removed, by the Chief Court, subject to the control of the Local Government, and to rules which the Local Government is hereby empowered to make as to the qualifications of persons to be appointed to the office of Subordinate Judge.

(3) The present Munsifs shall be deemed to have been duly appointed, and shall be, Subordinate Judges under this Act, and their classification as Subordinate Judges of the second, third or fourth class shall be determined by the Chief Court.

[Act XVII of 1877, s. 7.]

10. Every person appointed under this Act to be or to act as Judge of a Divisional Court, Assistant Judge or Subordinate Judge shall, within the local limits of the jurisdiction of the Court to which he may, from time to time, be posted, have the powers of a Judge of a Divisional Court, of the Court of an Assistant Judge, or of the Court of a Subordinate Judge of the fourth class, as the case may be. (Certain powers to be exercised *ex officio*.)

[Act XVII of 1877, s. 8.]

11. *(1)* The Local Government may, from time to time, confer upon any Deputy Commissioner or Assistant Commissioner the powers of an Assistant Judge, or upon any Assistant Commissioner the powers of a Subordinate Judge of any class, or upon any Subordinate Judge not being an Assistant Commissioner the powers of a Subordinate Judge of the second or of the third class, or upon any Tahsíldár or Náib Tahsíldár the powers of a Subordinate Judge of the third or of the fourth class, and may withdraw any powers so conferred. (Deputy Commissioners, Assistant Commissioners, Subordinate Judges, Tahsíldárs and Naíb Tahsíldárs may be invested with powers.)

(2) Any officer invested with powers under this section may exercise such powers in any district or sub-division of a district to which he may, from time to time, be posted.

[Act XVII of 1877, s. 9.]

12. The Local Government may, from time to time, confer upon any person all or any of the powers of a Court of any of the five grades last mentioned in section 4, and may withdraw any powers so conferred. (Any person may be invested with certain powers.)

[Act XVII of 1877, s. 10.]

13. *(1)* The Local Government may direct any three or more persons invested with powers of the same description under section 12 to sit together as a bench; and those powers shall, while such direction remains in force, be exercised by the bench so constituted, and not otherwise. (Exercise of such powers by benches.)

(2) The decision of the majority of the members of a bench constituted under this section shall be deemed to be the decision of the bench.

[Act XVII of 1877, s. 11.]

14. Except for the purpose of exercising control over any other Court, any person or any bench exercising the powers of a Court of any grade under section 12 or section 13 shall be deemed to be a Court of such grade for all the purposes of this Act. (Persons and benches exercising such powers to be deemed Courts of corresponding grades.)

[Act XVII of 1877, s. 12.]

15. Any person or bench invested under section 11, section 12 or section 13 with the powers of a Court of any grade shall exercise such powers and discharge the functions of such Court within such local limits and in such classes of cases as the Local Government may, from time to time, direct. (Such powers where and in what cases to be exercised.)

[Act XVII of 1877, s. 13.]

16. The Local Government may, from time to time, by notification in the official Gazette, fix the local limits of the jurisdiction of any Court of any of the six grades last mentioned in section 4. (Power to alter local limits of jurisdiction.)

The Panjáb Courts Bill, 1884.
(Chapter III.—Of the Jurisdiction and Powers of the Chief Court.—Sections 17-24.)

CHAPTER III.

OF THE JURISDICTION AND POWERS OF THE CHIEF COURT.

[Act XVII of 1877, s. 14.]

17. The Chief Court shall be deemed, for the purposes of all enactments for the time being in force, to be the highest Civil Court of appeal in the territories to which this Act extends.

Civil appeals from subordinate Courts.

[Act XVII of 1877, s. 15; *Cf.* Crim. Pro. Code, ss. 4 (*l*) and 266.]

18. The Chief Court shall be the highest Court of criminal appeal or revision in the said territories, and shall have power, as a Court of original jurisdiction, to try European British subjects committed to it for trial.

Criminal, appellate and revisional jurisdiction.

Power to try European British subjects.

[Act XVII of 1877, s. 16; Civil Pro. Code, s. 25.]

19. The Chief Court may, on the application of any of the parties, after giving notice to the parties and hearing such of them as desire to be heard, or of its own motion, without giving such notice, withdraw any suit or other civil proceeding instituted in any Court under its superintendence or control, and try or dispose of such suit or proceeding itself, or transfer the same for trial or disposal to any other Court under its superintendence or control and competent to try or dispose of such suit or proceeding in respect of its nature and the amount or value of its subject-matter.

Power to withdraw and try, or to transfer, suits.

[Act XVII of 1877, s. 17.]

20. Except as otherwise provided by any law for the time being in force, an appeal shall lie from any decree or order passed or made by the Chief Court—

Appeals from original jurisdiction of Chief Court.

(*a*) in exercise of the original jurisdiction conferred by section 19; or

(*b*) in exercise of any other original jurisdiction of a civil nature to which the Chief Court may by rule extend this section:

Provided that such appeal shall lie only in the cases and in manner following (that is to say):—

(*c*) when such decree or order is made by a single Judge, an appeal shall lie, either to a bench consisting of two other Judges, or to the full bench, as the Court may, by general rule or special order, from time to time, direct;

(*d*) when such decree or order is made by a bench of Judges not being the full bench, and such Judges differ in opinion, the appeal shall lie from such decree or order to the full bench.

[Act XVII of 1877, s. 19, extended to Divisional Courts.]

21. *(1)* Except as by this Act or by any other enactment for the time being in force otherwise provided, the Chief Court may make rules to provide in such manner as it thinks fit for the exercise, by one or more of its Judges of any powers conferred on it, and for the exercise by one or more of the Judges of a Divisional Court of any of the powers conferred on that Court, by this Act, or by any other enactment for the time being in force:

Delegation of powers to its members.

Provided that no order not being an interlocutory order, and no decree, sentence or decision of any Court, shall be reversed by any Judge of the Chief Court or of a Divisional Court sitting alone.

Proviso.

(2) When the Chief Court consists of more than three Judges, it may make rules declaring what number of Judges, not being less than three, shall constitute a full bench of the Court, and may by these rules prescribe the mode of determining what Judges shall sit as a full bench, when a full bench sitting becomes necessary.

(3) The Chief Court may, from time to time, delegate to one of its Judges the power of determining, subject to any rules made under this section, what Judge in each case shall sit alone and what Judges of the Court shall constitute any bench of Judges.

[See 24 & 25 Vic., cap. 104, s. 14.]

[Act XVII of 1877, s. 20.]

22. When there is a difference of opinion among the Judges composing any bench of the Chief Court on any question arising before such Judges in the exercise by them of any powers conferred on such Court by this Act, or by any other enactment for the time being in force, such question shall, except as otherwise provided by any enactment for the time being in force, be decided as follows, that is to say:

Rule of decision when Judges differ.

If the number of such Judges concurring in one opinion upon such question is larger than the number holding any other opinion upon such question, the decision shall be in accordance with the opinion of such larger number.

If the numbers of such Judges holding two or more opinions on such question are equal, the following rules shall be observed, that is to say:—

(*a*) if such bench is the full bench, or is exercising any original jurisdiction to which section 20 applies or is extended, the decision upon such question shall be in accordance with such one of these opinions as is held by the Judge who has precedence under section 6;

(*b*) in other cases the bench before which such question has arisen shall refer the same to the full bench, and the full bench shall decide the same in accordance with the rules hereinbefore contained, and the case in which such question has arisen shall be disposed of by the bench referring such question in accordance with the decision of the full bench thereon.

[Act XVII of 1877, s. 21.]

23. *(1)* Any single Judge of the Chief Court or any bench of Judges of such Court (not being the full bench) exercising any powers conferred on the Chief Court by this Act or by any other enactment for the time being in force may refer for the decision of the full bench any question of law or custom having the force of law, or the construction of any document, or the admissibility of any evidence arising before such Judge or bench of Judges.

Power to refer question to full bench.

(2) Any Judge or bench making a reference on any question in any case under this section shall dispose of such case in accordance with the decision of the full bench on such question.

[Act XVII of 1877, s. 22.]

24. *(1)* The Chief Court may, from time to time, appoint a Registrar and Deputy Registrar and such other ministerial officers as may be necessary for the administration of justice by such Court, and for the exercise and performance of the powers and duties conferred and imposed on it by this Act.

Power to appoint ministerial officers.

(2) The appointment of the Registrar shall be subject to the sanction of the Local Government.

The Panjáb Courts Bill, 1884.
(Chapter IV.—Of the Jurisdiction and Powers of the Subordinate Courts.—Section 34.)

[Act XVII of 1877, s. 23.]

25. The officers so appointed shall exercise such powers and discharge such duties of a ministerial nature as the Chief Court may, from time to time, direct.

Powers and duties of such officers.

[Act XVII of 1877, s. 24.]

26. Any such officer may be suspended or dismissed from his office by order of the Chief Court:

Provided that neither the Registrar nor the Deputy Registrar shall be dismissed without the previous sanction of the Local Government.

Suspension and dismissal of such officers.

[Act XVII of 1877, s. 25.]

27. The general superintendence and control over all Courts of the six grades last mentioned in section 4, and over all Courts of Small Causes, shall be vested in, and such Courts shall be subordinate to, the Chief Court.

Superintendence and control of subordinate Courts.

[Act XVII of 1877, s. 26.]

28. *(1)* The Chief Court may, from time to time, make rules—

Power to make rules as to petition-writers.

(*a*) declaring what persons shall be permitted to practise as petition-writers in the Courts of the Panjáb;

(*b*) regulating the conduct of persons so practising.

(2) Whoever breaks any rule made under this section and having the force of law shall be liable, on conviction before a Magistrate, to a fine which may extend to fifty rupees.

[Act XVII of 1877, s. 27; see also Criminal Procedure Code, s. 558, and Civil Procedure Code, s. 652.]

29. The Chief Court may, from time to time,—

Power to make rules as to other matters.

(*a*) make rules consistent with this Act conferring and imposing on the ministerial officers of the Courts subject to its superintendence such powers and duties of a ministerial nature as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed;

(*b*) make rules consistent with this Act to determine in what cases pleaders practising in such Courts shall be permitted to address such Courts in English;

(*c*) prescribe forms for seals to be used by such Courts;

(*d*) prescribe forms for such books, entries, statistics and accounts as it thinks necessary to be kept, made or compiled in such Courts or submitted to any authority;

(*e*) make rules consistent with this Act providing for the inspection of such Courts and the supervision of the working thereof;

(*f*) make such rules consistent with this Act, institute such enquiries and submit such recommendations to the Local Government as it may think fit, with a view to promoting the efficiency of the judicial and ministerial officers of such Courts and maintaining proper discipline among such officers.

[Act XVII of 1877, s. 28.]

30. *(1)* The Chief Court shall keep such registers, books and accounts as may be necessary for the transaction of the business of the Court, and shall submit to the Local Government such of the same registers, books and accounts, and statements of the work done in the Court, as may, from time to time, be required by the said Government.

Registers, books, accounts and statements to be kept and furnished by Chief Court.

(2) The Chief Court shall also comply with such requisitions as may, from time to time, be made by the Governor General in Council, or by the Local Government, for certified copies of, or extracts from, the records of the Courts.

[Sec. 29. Act XVII of 1877, and ss. 638 and 639, Civ. Pro. Code.]

31. *(1)* The Chief Court, when sitting as a Court of civil judicature, shall take evidence and record judgments and orders in such manner as it, by rule, from time to time, directs, and may, from time to time, frame forms for any proceeding in that Court in the exercise of its civil jurisdiction.

Chief Court to take evidence and record judgments according to its own rules, and to frame forms for proceedings.

(2) The following provisions of the Civil Procedure Code shall not apply to the Chief Court in the exercise of its original civil jurisdiction, namely, sections 119, 182 to 185 (both inclusive), 187, 189 to 191 (both inclusive), 192 (so far as it relates to the manner of taking evidence), 198, 200 to 204 (both inclusive), and so much of section 409 as relates to the making of a memorandum; XIV of 1882.

And sections 571 to 573 (both inclusive), 554 (so far as it relates to the time of dating and signing judgment) and 579 shall not apply to the Chief Court in the exercise of its appellate jurisdiction.

[Act XVII of 1877, s. 29, and Act XIV of 1882.]

32. *(1)* Any non-judicial or quasi-judicial act which the Civil Procedure Code requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code, may be done by the Registrar of the Court, or by such other officer of the Court as the Court may direct to do such act.

Non-judicial acts may be done by Registrar.

(2) The Chief Court may, from time to time, by rule, declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

[New. Cf. s. 199, Civ. Pro. Code.]

33. When any appeal, reference or case heard in the exercise of revisional jurisdiction has been heard by a bench consisting of two or more Judges, a judgment or dissent written by any member of the bench, but not pronounced, may be delivered by any other member of that bench.

Delivery of judgment in the absence of Judge who recorded it.

CHAPTER IV.

OF THE JURISDICTION AND POWERS OF THE SUBORDINATE COURTS.

[Sec. 30, Act XVII of 1877.]

34. Subject to the general superintendence and control of the Chief Court—

Controlling powers of Divisional Court and of Assistant Judges.

every Divisional Court shall control (*a*) the Courts of all Assistant Judges or officers invested with the powers of an Assistant Judge within its division, and (*b*) the Courts controlled by the Assistant Judges or Deputy Commissioners invested with the powers of an Assistant Judge within its division;

and, subject to the control of the Divisional Court—

every Assistant Judge and every Deputy Commissioner invested with the powers of an Assist-

The Panjáb Courts Bill, 1884.
(Chapter IV.—Of the Jurisdiction and Powers of the Subordinate Courts.—Sections 35-41.)

ant Judge shall control (*a*) all Courts of the four grades last mentioned in section 4, and all Courts of Small Causes, and (*b*) all Courts of persons other than the Deputy Commissioner of a district invested under section 11 or section 12 with the powers of an Assistant Judge within the area subject to his jurisdiction.

Principal Court of original jurisdiction.

35. Except as otherwise provided by any enactment for the time being in force, the Divisional Court shall be deemed to be the District Court or principal civil Court of original jurisdiction in its division:

Provided that the Local Government may empower any Assistant Judge or any Deputy Commissioner invested with the powers of an Assistant Judge to exercise all or any of the powers of a District Court within the area subject to his jurisdiction.

[Act XVII of 1877, s. 32.]

36. Except as otherwise provided by any enactment for the time being in force—

No pecuniary limits of jurisdiction of Divisional Court or of Assistant Judge.

(1) the Divisional Court, and (2) the Court of the Assistant Judge, shall have jurisdiction for the adjudication of original civil suits without limit as regards the amount or value of the subject-matter of such suits; and

Pecuniary limits of jurisdiction of other Courts.

each of the Courts mentioned in the first column of the subjoined table shall have jurisdiction for the adjudication of civil suits when the amount or value of the subject-matter of such suits does not exceed the limit prescribed for such Court in the second column of the table:—

COURT.	Limit of jurisdiction.
	Rs.
(*a*)—The Court of the Subordinate Judge of the first class.	5,000
(*b*)—The Court of the Subordinate Judge of the second class.	1,000
(*c*)—The Court of the Subordinate Judge of the third class.	500
(*d*)—The Court of the Subordinate Judge of the fourth class.	100

[Section 33, Act XVII of 1877.]

37. *(1)* Any Divisional Court or any Assistant Judge, or Deputy Commissioner invested with the powers of Assistant Judge, may exercise, as regards the Courts under its or his control, the same powers of withdrawal, trial, disposal and transfer as are conferred by section 19 on the Chief Court.

Powers of Divisional Court and of Court of Assistant Judge.

(2) The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(3) The Local Government may, from time to time, confer upon any Assistant Commissioner the powers of an Assistant Judge under this section, and withdraw the same.

[Section 34, Act XVII of 1877, s. 34.]

38. Notwithstanding anything contained in the Code of Civil Procedure, every Divisional Court, Assistant Judge or Deputy Commissioner invested with the powers of Assistant Judge may, by written order, direct that any civil business cognizable by it or his Court and the Courts under its or his control (including the execution of decrees) shall be distributed among such Courts in such manner as it or he thinks fit:

Power to distribute business.

Provided that no direction issued under this section shall empower any Court to exercise any jurisdiction in any suit of which the amount or value of the subject-matter exceeds its proper jurisdiction:

Provided also that no such direction shall be inconsistent with any direction or notification issued by the Local Government under section 15 or 16.

[Section 35, Act XVII of 1877.]

39. *(1)* The ministerial officers of the Divisional Court and of the Courts of Assistant Judges and Courts of Small Causes shall be appointed, and may be suspended and dismissed, by the Judges of those Courts respectively, whose orders in such matters shall, in the case of a Divisional Court, be final, and in the case of any other Court be subject to the general control of the Divisional Court.

Ministerial officers of subordinate Courts.

(2) The ministerial officers of all Courts controlled by an Assistant Judge, other than a Court of Small Causes, shall be appointed, and may be suspended and dismissed, by the Assistant Judge, subject to the general control of the Divisional Court.

(3) Every appointment under this section shall be subject to such rules as the Local Government, from time to time, prescribes in this behalf.

[Act XVII of 1877, s. 36.]

40. *(1)* The Judge or presiding officer of every Court under the control of an Assistant Judge may fine, in an amount not exceeding one month's salary, any of the ministerial officers of such Court who is guilty of misconduct or neglect in the performance of the duties of his office.

Power to fine ministerial officers.

(2) The Assistant Judge, subject to the general control of the Divisional Court, may, on appeal or otherwise, reverse or modify any such order made by any such Judge or officer, other than a Judge of a Court of Small Causes; and may of his own motion fine up to the amount of one month's salary any ministerial officer of any Court under his control other than a Court of Small Causes.

(3) Any Divisional Court or Assistant Judge, and the Judge of any Court of Small Causes, may fine any ministerial officer of his Court in an amount not exceeding one month's salary.

[New. *Cf.* Act VI of 1871, s. 29, and Act XIII of 1879, s. 24.]

41. The Local Government may invest, within such local limits as it, from time to time, fixes; any Assistant Judge or Subordinate Judge of the first class with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of five hundred rupees, and any Subordinate Judge of the second or third class with similar jurisdiction up to the amount of fifty rupees; and may, whenever it thinks fit, withdraw the jurisdiction so conferred.

Power to invest with Small Cause Court jurisdiction.

The Panjáb Courts Bill, 1884.
(Chapter V.—Of Appellate Jurisdiction in Civil Cases.—Sections 42-47.)
(Chapter VI.—Of Revenue Courts.—Section 48.)

CHAPTER V.

OF APPELLATE JURISDICTION IN CIVIL CASES.

First appeals to whom to lie.

42. *(1)* Appeals from the decrees and orders of a Court of any of the three grades last mentioned in section 4 in suits of the nature cognizable in Courts of Small Causes, and in suits of any other class which the Chief Court, with the sanction of the Local Government, may, from time to time, determine to place on the same footing, shall, when such appeals are allowed by law, and the value or amount of the subject-matter of the suit does not exceed five hundred rupees, lie to the Court of the Assistant Judge.

(2) Appeals from the decrees and orders of the Court of the Assistant Judge in original suits, when the amount or value of the subject-matter of the suit exceeds five thousand rupees, and appeals from the decrees and orders of the Divisional Court in original suits, shall, when such appeals are allowed by law, lie to the Chief Court.

(3) Appeals from decrees and orders in original suits not hereinbefore provided for shall, when such appeal is allowed by law, lie to the Divisional Court.

Further appeal to lie to the Chief Court on the certificate of the Divisional Court that the case is a fit one for further appeal.

43. When two Judges of a Divisional Court are unable to concur in a judgment varying or reversing the decree or order appealed against, or when some question of law or custom of general interest is involved, the Judges may, if they regard the case as of sufficient importance to justify a further appeal, or if, when the certificate is applied for, one of the Judges who passed the decree is no longer attached to the Court, the remaining Judge may, if he regards the case as of sufficient importance to justify a further appeal, grant a certificate to any party to the appeal that the case is a fit one for a further appeal; and on such certificate being granted a further appeal shall lie to the Chief Court from the decree or order of the Divisional Court on any ground which would be a good ground of appeal if the decree or order had been passed in an original suit:

Provided that no further appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, or other suit placed on the same footing under section 42 when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

XIV of 1882.

Appellate decision of Assistant Judge or Divisional Court otherwise final.

44. Subject to the provisions of section 43, and of the Code of Civil Procedure, sections 595 and 622, the decision of the Court of the Assistant Judge or of the Divisional Court passed in appeal shall be final.

[*Cf.* Act XIII of 1879, s. 24.]

Appeals from decrees, &c., passed before Act comes into force.

45. For the purposes of sections 42 and 23, all decrees, orders and decisions passed before the date on which this Act comes into force shall be deemed—

(*a*) if passed by a Commissioner or Additional Commissioner, or by the Civil Judge of Peshawar, to have been passed by the Divisional Court;

(*b*) if passed by a Deputy Commissioner or other officer invested with the appellate jurisdiction of a Deputy Commissioner, to have been passed by an Assistant Judge;

(*c*) if passed by an Assistant Commissioner with full powers, to have been passed by a Subordinate Judge of the first class;

(*d*) if passed by an Assistant Commissioner not invested with full powers or with the appellate powers of a Deputy Commissioner, or by an Honorary Civil Judge, or by a Tahsíldár or Náib Tahsíldár, to have been passed by a Subordinate Judge of the second, third or fourth class:

Provided that—

(1) no right of appeal which has accrued under the existing law shall be taken away, and no certificate shall be required for a further appeal;

(2) if the amount or value of the subject-matter of the suit exceeds five thousand rupees, the appeal, if any is allowed by law, shall lie to the Chief Court, but in other cases in which the appeal now lies to the Commissioner's Court, the appeal shall lie to the Divisional Court.

[Act XVII of 1877, s. 40.]

46. *(1)* The period of limitation for an appeal under section 41 or section 42 shall run from the date of the decree, order or decision appealed against, and shall be as follows, that is to say:—

Period of limitation.

(*a*) when such appeal lies to the Court of the Assistant Judge or to the Divisional Court—sixty days.

(*b*) when such appeal lies to the Chief Court—ninety days.

(2) In computing such periods of sixty and ninety days, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

[Act XVII of 1877, s. 41.]

47. The Chief Court, the Divisional Court or the Court of an Assistant Judge may, on the application of any of the parties, after giving notice to the parties and hearing such of them as desire to be heard, or of its own motion, without giving such notice, withdraw any civil appeal pending in any Court under its superintendence or control, and try such appeal itself, or transfer the same for trial to any other Court under its superintendence or control and of a grade equal or superior to that of the Court from which such appeal is withdrawn.

Power to withdraw and try or to transfer appeal.

CHAPTER VI.

OF REVENUE COURTS.

Certain classes of suits cognizable by Revenue Courts only.

48. Suits of any of the following classes instituted on and after the first day of October, 1884, shall be heard and determined in Revenue Courts and not otherwise:

(*a*) suits by tenants to establish a claim to a right of occupancy under Chapter II of the Panjáb Tenancy Act, 1868;

(*b*) suits by landlords under section 6 of the same Act to prove that a tenant presumed to have a right of occupancy under that section has no such right;

(*c*) suits for enhancement or abatement of [illegible] under Chapter III of the same Act;

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(Chapter VI.—Of Revenue Courts.—Sections 49-55.)

(*d*) suits for ejectment of a tenant under Chapter IV of the same Act;

(*e*) suits under section 25 of the same Act to contest liability to be ejected when notice of ejectment has been served;

(*f*) suits under section 40 of the same Act to determine the amount or value of the compensation to be paid or the terms of a lease to be granted to a tenant under section 39 of the same Act, or both;

(*g*) suits for arrears of rent on account of land, or on account of any rights of pasturage, forest-rights, fisheries or the like;

(*h*) suits for the recovery of any over-payment of rent;

(*i*) suits by lambardárs for arrears of land-revenue, payable through them by the co-sharers, or for village-expenses or other dues for which the co-sharers may be responsible to the lambardár;

(*j*) suits by co-sharers for their share of the profits of an estate or part thereof after payment of the land-revenue and village-expenses, or for a settlement of accounts;

(*k*) suits by assignees of land-revenue for arrears of revenue due to them as such;

(*l*) suits by superior proprietors for arrears of revenue due to them as such; and

(*m*) suits under section 9 of the Specific Relief Act to recover possession of land assessed to the land-revenue or liable to be so assessed, or of which the land-revenue has been wholly or in part released, compounded for, redeemed or assigned.

49. If in any suit of any of the classes mentioned in clauses (*a*) to (*l*) of the last preceding section it appears that the parties are at issue on any question of proprietary title, or on the question of the existence of the relation of landlord and tenant between them, the Revenue Court shall not determine such question, but may either proceed to decide the case by passing a decree contingent upon the determination of such question by a Civil Court, giving such directions as it may think proper as to the party with whom it shall rest to institute a suit for the purpose, or, on the application of either party, may stay proceedings to enable the party applying to institute a suit for the purpose in a Civil Court; but the proceedings shall not be stayed under this section for more than three months unless such suit is in the meantime instituted; nor, when a decree has been passed contingent upon the determination of such question by a Civil Court, shall any execution be issued, property sold or person ejected or imprisoned thereunder until the receipt of a copy of the judgment of the Civil Court on the question, unless the decree has been passed against the party whose duty it is to sue and he fails to institute the suit for more than three months from the date of the decree.

Procedure when question of proprietary title or of existence of relation of landlord and tenant arises.

50. All Assistant Commissioners and Tahsíldárs shall have power to try suits of the classes mentioned in section 48, clauses (*g*), (*i*), (*k*) and (*l*), when the amount or value of the claim does not exceed one hundred rupees; and the Local Government may invest Náib Tahsíldárs with the same powers.

Certain revenue powers of Assistant Commissioners and Tahsíldárs to be exercised *ex officio*.

51. The Local Government may invest any Assistant Commissioner or Tahsíldár with power to try all suits of the classes mentioned in the same section, clauses (*d*) and (*f*) to (*m*), both inclusive.

Additional powers with which Assistant Commissioners and Tahsíldárs may be invested.

52. The Deputy Commissioner shall have power to try suits of any of the classes mentioned in section 48, and the Local Government may specially invest any Assistant Commissioner with the powers of a Deputy Commissioner for the trial of suits of the classes mentioned in clauses (*a*), (*b*), (*c*) and (*e*) of the same section.

Revenue powers of Deputy Commissioners and power to invest Assistant Commissioners therewith.

53. *(1)* The Local Government may, with the previous sanction of the Governor General in Council, make rules consistent with this Act for regulating the procedure of Revenue Courts in cases under this chapter for which a procedure is not prescribed thereby; 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 Courts. [*Cf.* Act XVIII of 1881, s. 19.] XIV of 1882.

Procedure of Revenue Courts how to be regulated.

(2) Until such rules are made, Revenue Courts shall be guided in cases under this chapter by the provisions of the Code of Civil Procedure, section 2, Part I, except Chapters XVI and XX, Parts II, III and IV, Chapters XXXVII and XXXVIII, XLI, XLIII and XLIV, and Parts VIII and X, so far as applicable; and the Court of the Financial Commissioner shall, in respect of such cases, be deemed to be the High Court within the meaning of the said Code, and shall exercise, as regards the Courts under his control, the same powers of withdrawal, trial, disposal and transfer as are conferred by sections 19 and 47 on the Chief Court; and the Commissioner and Deputy Commissioner shall respectively exercise, as regards the Courts under his control, the same powers of withdrawal, trial, disposal and transfer as are conferred by sections 37 and 47 upon a Divisional Court and an Assistant Judge. XIV of 1882.

54. Every Commissioner or Deputy Commissioner may, by written order, direct that any business cognizable under this chapter by his Court, and the Courts under his control (including the execution of decrees) shall be distributed among such Courts in such manner as he thinks fit:

Power to distribute business.

Provided that no direction issued under this section shall empower any Court to exercise any jurisdiction which it is not empowered to exercise under section 50, section 51 or section 52.

55. All decisions and orders (except decisions and orders in suits under section 9 of the Specific Relief Act) of Assistant Commissioners not invested with the powers of a Deputy Commissioner under section 52, and of Tahsíldárs, shall be appealable to the Deputy Commissioner, whose order thereon shall be final, unless when the amount or value of the subject-matter exceeds one hundred rupees, when I of 1877.

Cases appealable to Deputy Commissioner.

The Panjáb Courts Bill, 1884.
(Chapter VI.—Of Revenue Courts.—Sections 56-64.)

further appeal shall lie to the Commissioner, or, in case the amount or value of the subject-matter exceeds five thousand rupees, to the Financial Commissioner.

Further appeal in certain cases.

56. *(1)* All decisions and orders of Deputy Commissioners and Assistant Commissioners invested with the powers of a Deputy Commissioner in suits of the classes mentioned in clauses (*a*), (*b*), (*c*) and (*e*) of section 48, and in other suits (except suits under section 9 of the Specific Relief Act) in which the value of the subject-matter exceeds one hundred rupees, shall be appealable to the Commissioner, or in case the amount or value exceeds five thousand rupees, to the Financial Commissioner. I of 1877.

Cases appealable to Commissioner or Financial Commissioner.

(2) In all other cases their judgments and orders shall be final.

Other judgments to be final.

57. An appeal from the decisions of the Commissioner on appeals in suits of the classes mentioned in clauses (*a*), (*b*), (*c*) and (*e*) of section 48 shall lie to the Financial Commissioner, unless when the Commissioner dismisses the appeal. All other judgments and orders of the Commissioner on appeals shall be final, subject to revision by the Financial Commissioner.

Further appeal to Financial Commissioner in certain cases.

Other judgments of Commissioner to be final.

58. The Financial Commissioner may at any time call for any case which [illegible] Financial Commissioner has power to hear, from any Commissioner or any Court subordinate to him, and pass such orders thereon consistent with the law applicable thereto as he thinks fit.

Revisional jurisdiction of Financial Commissioner.

59. *(1)* The period of limitation for an appeal under section 55, section 56 or section 57 shall run from the date of the decree, order for decision appealed against, and shall be as follows, that is to say:—

Limitation of appeals under this chapter.

(*a*) when such appeal lies to the Court of the Deputy Commissioner or of the Commissioner—sixty days;

(*b*) when such appeal lies to the Financial Commissioner—ninety days.

(2) In computing such periods of sixty and ninety days, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877. of 1877.

60. Subject to the general superintendence and control of the Financial Commissioner, every Commissioner shall control the Revenue Courts of all Deputy Commissioners and the Revenue Courts controlled by Deputy Commissioners within his Division; and

Controlling powers of Financial Commissioner, Commissioner and Deputy Commissioner.

subject to the control of the Commissioner, every Deputy Commissioner shall control the Revenue Courts of all Assistant Commissioners and Tahsíldárs and officers invested with the powers of [illegible] Commissioner, Assistant Commissioner or [illegible] within his District.

61. Except for the purpose of exercising control over any other Revenue Court, any person exercising the powers of a Revenue Court of any grade under section 49 or section 51 shall be deemed to be a Court of such grade for all the purposes of this Act, and shall exercise such powers and discharge the functions of such Court within such local limits and in such classes of cases as the Local Government may, from time to time, direct.

Persons invested with powers under this chapter to be deemed to be Courts of corresponding grades, and where and in what cases to exercise their powers.

62. When more than one Financial Commissioner is appointed, the Local Government may, from time to time, make rules as to the distribution of revenue, judicial and other business between the persons so appointed; and, until such rules are made, the Financial Commissioner who is senior in respect of his appointment as such may transfer such business as he thinks fit to the other Financial Commissioner for disposal, and may withdraw and himself dispose of any business so transferred and not disposed of.

Distribution of business between Financial Commissioners.

63. If either Financial Commissioner desires to obtain the opinion of the other upon any question arising in any appeal under this chapter pending before him, he may forward the record to the other Financial Commissioner with a statement of the question upon which he desires his opinion; and the latter, after such examination and such hearing (if any) as he thinks fit, shall record his opinion upon the question referred to him; and the Financial Commissioner who made the reference shall proceed to dispose of the appeal after considering the opinion so obtained.

Consultation between Financial Commissioners.

64. *(1)* The Local Government may, from time to time, by notification in official Gazette, declare that a settlement of land-revenue is in progress in any local area, and invest any officer making or controlling such settlement, either by name or in virtue of his office, with all or any of the powers of any Court constituted under this Act for the purpose of trying all or any specified class of suits and appeals relating to land, or the rent, revenue or produce of such land, arising in such local area.

Power to invest Settlement-officers with powers of Civil or Revenue Courts in certain cases.

(2) The publication of any notification under this section shall be conclusive evidence that a settlement of land-revenue is in progress in the local area to which the notification refers.

(3) The Local Government may cancel any such notification.

(4) While such notification continues in force, such powers shall be exercised by the officers so invested, and not otherwise:

Provided that the Local Government may, by order published in the official Gazette, direct that any jurisdiction with which any officer may have been invested by such notification shall be exercised solely by the Court by which such jurisdiction would have been exercised if such notification had not been published:

Provided also that any cases pending before any officer under such notification when it is cancelled [illegible] proceeding such cancellation, be

disposed of by him as if it continued in force, unless the Local Government directs (as it is hereby empowered to do) that such cases shall be transferred for disposal to the Court by which they would have been disposed of if such notification had not been published.

Explanation.—In this section "land" means land assessed to the land-revenue or whereof the land-revenue has been wholly or in part released, compounded for, redeemed or assigned, and all land the property of Government not within the site of any town or village.

[Act XVII of 1877, s. 50.] Power to alter subordination of Courts for purposes of section 64.

65. For the purposes of section 64 the Local Government may, notwithstanding anything in this Act, from time to time direct that any of the Courts mentioned in this Act (except the Chief Court) shall, in respect of any specified class of cases, be subordinate to, or subject to the control or superintendence of, any authority other than those specified in this Act.

CHAPTER VII.

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS.

[Act XVII of 1877, s. 46; compare Act XXIII of 1861, s. 25; Act XVII of 1875, s. 19; and Act XIII of 1879, s. 23.] Presiding Officer of Court not to try certain suits and appeals.

66. *(1)* Except with the consent of the parties, no presiding officer of any Court having jurisdiction under this Act shall try any suit or appeal to which he is a party or in which he is personally interested, or any appeal against a decree or order passed by himself, or shall adjudicate upon any proceeding connected with or arising out of such suit or appeal.

(2) When any such suit, appeal or proceeding comes before him, he shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

(3) The superior Court shall thereupon dispose of the case in the manner prescribed by section 25 of the Code of Civil Procedure. XIV of 1882.

[Act XVII of 1877, s. 47.] Rules when to have force of law.

67. All rules made and forms prescribed under section 28 and section 29, clauses (*a*), (*b*), (*d*) and (*e*), shall be submitted for sanction to the Local Government, and, on receiving such sanction, shall be published in the official Gazette, and shall thereupon have the force of law.

[Act XVII of 1877, s. 48.] Local Government may transfer power conferred by section 27 to a single Judge.

68. *(1)* The Local Government may, from time to time, with the previous sanction of the Governor General in Council, by notification in the official Gazette, appoint a single Judge of the Chief Court to exercise the power of superintendence conferred on such Court by section 27, and may cancel such notification.

(2) While such notification continues in force, such power shall be exercised by the Judge appointed thereby, and not otherwise.

[Cf. Act XXII of 1879, s. 7 and Act XIV of 1869.] Jurisdiction under Divorce Act.

69. For the purposes of the Indian Divorce Act, any Judge of the Divisional Court shall be deemed to be the District Judge throughout the Division over which that Court has jurisdiction.

Vacations.

70. *(1)* Subject to such orders as may, from time to time, be issued by the Governor General in Council, and to the approval of the Local Government, the Chief Court shall prepare a list of days to be observed in each year as close holidays in the Civil Courts subordinate thereto. [Act VI of 1871, s. 17; Act XIII of 1879, s. 38].

(2) Such list shall be published in the official Gazette, and the said days shall be observed accordingly.

Pending proceedings.

71. *(1)* All cases or proceedings pending in any Civil Court on the first day of October, 1884, may be disposed of as if this Act had not been passed, unless the Chief Court directs (as it is hereby empowered to do) that such cases or proceedings shall be transferred for disposal to the Courts established under this Act which would have had jurisdiction if they had been in existence when such cases or proceedings were instituted.

(2) For the purposes of this section, all appeals in civil suits or proceedings pending on the said day shall—

(*a*) if preferred from the decrees, orders or decisions of Commissioners, Additional Commissioners or the Civil Judge of Peshâwar be deemed to be appeals from the Divisional Court;

(*b*) if preferred from the decrees, orders or decisions of Deputy Commissioners or officers invested under section three of Act XIV of 1875 with the appellate powers of Deputy Commissioners, or with the full powers of an Assistant Commissioner, be deemed to be appeals from the Court of the Assistant Judge; and

(*c*) if preferred from the decrees, orders or decisions of Assistant Commissioners not invested with full powers, or with the appellate powers of Deputy Commissioners, or of Honorary Civil Judges not invested with the full powers of an Assistant Commissioner, or of Tahsíldárs or Náib Tahsíldárs, be deemed to be appeals from Subordinate Judges of the second, third or fourth class.

Explanation of sections 617 and 622, Civil Procedure Code.

72. For the proposes of sections 617 and 622 of the Civil Procedure Code, the decree of an Appellate Court subordinate to the Chief Court shall be deemed to be final when no certificate permitting a further appeal to the Chief Court under section 48 has been granted, and a case decided by an Appellate Court in which no such certificate has been granted shall be deemed to be a case in which no appeal lies to the Chief Court. XIV of 1882.

Amendment of the first schedule annexed to the Court-fees Act, 1870.

73. To the first schedule annexed to the Court-fees Act, 1870, the following shall be added :— VII of 1870.

NUMBER.		PROPER FEE.
3. Application to the Chief Court of the Panjáb for the exercise of its revisional jurisdiction under section 622 of the Code of Civil Procedure.	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.	Two rupees.
	When such amount or value exceeds twenty-five rupees.	The fee leviable on memorandum of appeal.

Refund of fee paid on application for revision.

74. If the Chief Court, on an application under section 622 of the Civil Procedure Code, on which a fee has been paid under the last preceding section, sets aside or modifies the decree or order of a subordinate Court, or remands the case for a fresh decision, it may grant to the applicant a certificate authorizing him to receive back from the Collector the full amount of fee paid on the application, or any smaller amount which, with regard to the circumstances of the case, it may think proper to order to be refunded. XIV of 1882.

Saving of certain appointments, rules and forms, notifications, powers and orders.

75. All appointments made under sections 5 and 22 of Act XVII of 1877, directions given under section 23, rules and forms prescribed under sections 26 and 27, and notifications published, powers conferred and orders issued under section 49, of the same Act, shall, so far as may be, be deemed to have been respectively made, given, prescribed, published, conferred and issued under this Act.

SCHEDULE.

ACTS REPEALED.

(*See section 2.*)

Number and year.	Title of Act.	Extent of repeal.
Act IV of 1869	The Indian Divorce Act.	So much of section 3 as defines "District Judge" in the Panjab to mean the "Commissioner of a Division."
Act X of 1870	The Land Acquisition Act, 1870.	So much of section 3 as defines "Court" in the Panjáb to mean the "Commissioner of a Division."
Act XIV of 1875.	The Panjáb Judicial Administration Act, 1875.	So far as it relates to civil or criminal judicial powers.
Act XVII of 1877.	The Panjáb Courts' Act, 1877.	The whole.

STATEMENT OF OBJECTS AND REASONS.

AN essential portion of the scheme for the reorganization of the civil administration in the Panjáb, which has recently received the sanction of the Secretary of State for India, is to be found in the improvement of the judicial agency and the reform of the appellate system. The arrangements proposed for this purpose render necessary very large changes in the law under which the Panjáb Courts are now constituted (the Panjáb Courts Act, 1877), and the most convenient mode of giving effect to them appears to be to repeal that Act and re-enact its provisions with the necessary additions and modifications. This it is proposed to do by the present Bill.

2. The changes in the law which it is intended to make will now be noticed.

3. Chapter II deals with the constitution of the Courts. The present law confers the civil judicial powers of the Courts subordinate to the Chief Court upon the executive officers of Government from the Commissioner down to the Tahsíldár, though Act XIV of 1875 enables the Local Government to confer the powers of a Deputy Commissioner or of a Tahsíldár upon other persons, and under that Act civil judicial powers have been conferred upon a number of officers known as Judicial Assistants and Munsifs, whose functions are mainly, though not always exclusively, judicial. Similarly, the Civil and Sessions Judge of Peshâwar and certain Additional Commissioners have been invested with the judicial powers of Commissioners under Act XVII of 1877. It is now proposed to relieve Commissioners and Deputy Commissioners, as a rule, of civil judicial functions, though they will continue to exercise jurisdiction in certain classes of cases which will be transferred from the Civil to the Revenue Courts, and they may also be invested with civil judicial powers where the judicial work is so light as not to require the creation of special Courts. Commissioners will likewise be, as a rule, relieved of the functions as Sessions Judges which now devolve upon them, but this can be done under the Criminal Procedure Code, without special legislation.

4. Special designations which do not imply the exercise of executive functions are accordingly given to the Courts subordinate to the Chief Court (section 4).

5. With a view to strengthen the Courts of appeal in order to admit of greater finality being given to appellate decisions, it is proposed that the Court immediately subordinate to the Chief Court should ordinarily consist of two Judges, and that, while one of these Judges may be enabled by rule to exercise certain of the powers of the Court, a single Judge should not have power in the exercise of his appellate jurisdiction to reverse any order other than an interlocutory order passed by any Court.

6. Power is also taken (in section 7) to appoint the Commissioner of a Division to be one of the Judges of a Divisional Court in addition to his other duties, as it is in contemplation to establish one of the Divisional Courts at Derá Ismáil Khán, and only one Judge will be available for that Court unless the Commissioner of the Deráját Division is appointed as one of the Judges.

7. The appointment of Assistant Judges and Subordinate Judges of the first class by the Local Government, and of Subordinate Judges of the second, third and fourth classes, corre-

sponding to the present Munsifs, by the Chief Court, subject to rules to be made by the Local Government, is provided for by section 9. The Court of the Assistant Judge will replace the Court of the Deputy Commissioner or Judicial Assistant under the present law, and no provision has hitherto been made by law as to the authority by which Munsifs may be appointed or removed.

8. The other differences between Chapter II of the Bill and the corresponding chapter of Act XVII of 1877 follow upon those which have been already described.

9. The third chapter, which provides for the jurisdiction and powers of the Chief Court, only differs from the corresponding chapter of Act XVII of 1877 in that section 19, relating to the transfer of suits, is assimilated to section 25 of the Civil Procedure Code; section 21 is modified so as to enable the Chief Court to make rules for the exercise by one or more of the Judges of a Divisional Court of the powers of that Court, except as regards the reversal of decrees, sentences or decisions of any Court, to provide by rule for the constitution of a full bench of the Chief Court, and to delegate to one of its Judges the power of determining what Judges shall sit alone or as a bench of the Court, and power is also taken to enable a single Judge of the Chief Court or of a Divisional Court to reverse an interlocutory order; sections 31 and 32 replace the reference in section 29 of the present Act to sections 633 and 637 of the Civil Procedure Code, and add what is necessary of sections 638 and 639 of that Code; and section 33 provides for the delivery of the judgments of a bench of Judges by any Judge who was a member of that bench, in accordance with existing practice, and with the analogy of section 199 of the Civil Procedure Code.

10. Chapter IV relates to the jurisdiction and powers of Courts subordinate to the Chief Court. The Divisional Court is declared to be the principal Civil Court of original jurisdiction, but the Local Government is enabled to empower any Assistant Judge or Deputy Commissioner with the powers of an Assistant Judge to exercise any of the powers of a District Court, so as to obviate the inconvenience of unduly limiting the number of Courts which can exercise jurisdiction under certain laws, *e. g.*, Acts XL of 1858, XXVII of 1860 and IX of 1861.

11. While the jurisdiction of the Divisional Court and of the Court of the Assistant Judge is unlimited as respects the value or amount in litigation, thus corresponding with the jurisdiction now exercised by Commissioners and Deputy Commissioners, that of the Subordinate Judge of the first class is limited to Rs. 5,000 instead of Rs. 10,000, which is the limit of the present jurisdiction of an Assistant Commissioner with full powers, and that of other Subordinate Judges may extend either to Rs. 100, to Rs. 500 or to Rs. 1,000.

12. In section 41 power is taken to invest Assistant Judges or Subordinate Judges with the jurisdiction of a Small Cause Court Judge for the trial of suits cognizable by a Small Cause Court within certain limits of value or amount.

13. The other changes in Chapter IV are those which are rendered necessary by the alterations of the law already described.

14. Chapter V relates to appellate jurisdiction in civil cases. It embodies the modifications proposed in the appellate system with the view of restricting the right of appeal so far as it is considered that the improved organization of the Courts will admit of this. The second appeals allowed by the Code of Civil Procedure, and the further appeals allowed by the present Panjáb Courts Act are abolished, and the decisions of appellate Courts are made final, except that the Judges of a Divisional Court are enabled, when they differ as to the judgment which should be passed, or when some question of law or custom or of general interest is involved, if they think the case of sufficient importance to justify further appeal, to grant a certificate permitting a further appeal to the Chief Court.

15. Appeals to Assistant Judges are confined to suits not above Rs. 500 in value, either of the Small Cause Court class or of any other class which the Chief Court, with the sanction of the Local Government, may determine to put upon the same footing, and appeals in suits above Rs. 5,000 in value, as well as appeals from decrees of the Divisional Court, will, when allowed by law, lie to the Chief Court, all other appeals allowed by law lying to the Divisional Court.

16. Section 47, relating to the transfer of appeals, has been modified to the same extent as section 19.

17. Chapter VI, which deals with Revenue Courts, is new, having been rendered necessary by the transfer of certain classes of suits enumerated in section 48 from the Civil to the Revenue Courts. It provides for the jurisdiction and powers of these Courts, for their procedure, for appeals from their decisions, for the revisional jurisdiction of the Financial Commissioner, and the controlling powers of the Financial Commissioner, Commissioner and Deputy Commissioner, respectively, for the transfer of suits and appeals, and for the distribution of business between Financial Commissioners when more than one such officer is appointed, the sanction which has been given by the Secretary of State to the appointment of a second Financial Commissioner rendering a provision of this nature necessary. Sections 64 and 65 correspond with sections 19 and 50 of the present Act, enabling the Local Government to confer judicial powers upon Settlement-officers, the only addition being that the officer may be so empowered either by name or in virtue of his office.

18. Chapter VII contains miscellaneous and supplementary provisions, some of which correspond with sections 46 to 48 of the present Act. Of the others, section 69 provides that any Judge of the Divisional Court shall be deemed to be the District Judge throughout its jurisdiction for the purposes of the Indian Divorce Act; section 70 provides for vacations; and section 71 for proceedings pending when this Bill becomes law; section 72 interprets certain expressions in sections 617 and 622 of the Civil Procedure Code so as to prevent doubt as to the cases in which the revisional jurisdiction of the Chief Court may be exercised; section 73 amends the Court-fees Act so that the fee leviable on a memorandum of appeal, when it exceeds the fee leviable on a petition to the Chief Court, may be charged on an application to it for the exercise of its revisional jurisdiction under section 622 of the Civil Procedure Code; and section 74 enables the Court in certain cases to grant a certificate authorizing the refund of the fee so charged.

The 25th June, 1884.

D. G. BARKLEY.

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th July, 1884, and was referred to a Select Committee :—

No. 8 OF 1884.

THE KHOJÁ SUCCESSION BILL, 1884.

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SCHEDULE.—PORTIONS OF THE INDIAN SUCCESSION ACT (X OF 1865) MODIFIED FOR APPLICATION TO WILLS MADE BY KHOJÁS.

Explanation of abbreviation used in the margin.

"Bo. Bill" refers to the draft Bill prepared by the Commission and received with the letter from the Government of Bombay, No. 216, dated 14th January, 1880.

A Bill to amend and define the law of Testamentary and Intestate Succession to Khojás.

WHEREAS it is expedient to amend and define the law applicable to testamentary and intestate succession to Khojás; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Khojá Succession Act, 1884; and it shall extend to the whole of British India.

Short title. Local extent.

2. Except as provided by any other law for the time being in force, succession to the property, whether moveable or immoveable, in British India of a Khojá dying on or after the first day of January eighteen hundred and eighty-five shall be regulated by the rules contained in this Act, wherever he may have had his domicile at the time of his death. [Act X of 1865, s. 5.]

Application.

Explanation.—Property in British India includes obligations enforceable there.

3. (*1*) In this Act, unless there is something repugnant in the subject or context,— [Bo. Bill, s. 3.]

Definitions.

"son" means a legitimate son, and does not include an adopted son:

"grandson" means a son's son:

"great-grandson" means a grandson's son:

"daughter" means a legitimate daughter:

"father" and "mother" do not include step-father and step-mother:

"grandfather" and "grandmother" do not include a father's step-father or step-mother:

"brother" and "sister" do not include step-brother and step-sister, nor half-brother and half-sister:

"half-brother" means son of the same father but by another wife:

"lineal male descendant," used with reference to any person, means a male descended from that person through males only: [New.]

"degree" means a degree of kindred computed according to the rules laid down in sections 21, 22 and 24 of the Indian Succession Act, 1865, and the table of consanguinity thereto annexed: X of 1865.

"undivided property" means a share in the property belonging to an undivided family: [Home Dept. Office Memo., dated 12th August, 1882, para. 7.]

"restricted owner," used with reference to any property, means a female acquiring that property in the manner specified in section 21, section 23, sub-section (2), section 24, sub-section (1), section 27 and section 39. [New.]

(*2*) When it is provided in this Act that the members of any class shall take property and the shares which they are respectively to take therein are not specified, they shall take equal shares therein.

4. For the purposes of this Act there shall be no distinction between ancestral and self-acquired property, nor between moveable and immoveable property, nor between those born in the lifetime of a deceased owner of property and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive. [Bo. Bill, s. 7.] [Act X of 1865, s. 23.]

No distinction between ancestral and self-acquired, nor between moveable and immoveable, property.
Child in womb.

The Khojá Succession Bill, 1884.
(Chapter II.—Of Succession to the Undivided Property of a Male Khojá dying intestate.—Sections 5-6.)
(Chapter III.—Of Succession to the Separate Property of a Male Khojá dying intestate.—Sections 7-20.)

CHAPTER II.

[Bo. Bill, ss. 8-12.] OF SUCCESSION TO THE UNDIVIDED PROPERTY OF A MALE KHOJÁ DYING INTESTATE.

5. (*1*) When a male Khojá owning undivided property dies intestate in respect of that property, leaving legitimate lineal male descendants not more remote than the fourth degree, every such descendant shall be entitled to a share in that property unless one of the persons through whom he is descended from the intestate is living.

Where there are lineal male descendants within fourth degree.

(*2*) When the sharers under sub-section (1) all stand in the same degree of kindred to the intestate, their shares shall be equal.

[Act X of 1865, s. 33.] (*3*) When the sharers under sub-section (1) do not all stand in the same degree of kindred to the intestate, the property shall be divided into such a number of equal shares as will correspond with the number of the sharers who stood in the nearest degree of kindred to him at his decease, and of his lineal male descendants of the like degree of kindred who died before him, and through whom the other sharers are descended from him; and one such share shall be allotted to each of the sharers who stood in the nearest degree of kindred to the intestate at his decease; and one such share shall be allotted in respect of each such deceased male descendant; and the share allotted in respect of each such deceased male descendant shall be divided among the sharers descended through him, in such manner that the sons of any person shall always take that which their father would have been entitled to if he had survived the intestate.

[Bo. Bill, s. 13.] 6. In default of legitimate lineal male descendants as aforesaid, the property of the intestate shall be divided equally among all the male members of his undivided family living at his death.

Where there are no lineal male descendants within fourth degree.

CHAPTER III.

OF SUCCESSION TO THE SEPARATE PROPERTY OF A MALE KHOJÁ DYING INTESTATE.

[Bo. Bill, s. 16.] 7. When a male Khojá owning property, not being undivided property, dies intestate in respect of that property, leaving legitimate lineal male descendants not more remote than the fourth degree, the property shall descend in the manner provided in section 5.

Where there are lineal male descendants within fourth degree.

[Bo. Bill, s. 17.] 8. In default of legitimate lineal male descendants as aforesaid, the intestate's father shall succeed to the property.

In default of such lineal male descendants, property to belong to the intestate's father.

[Bo. Bill, s. 18.] 9. In default of the father, the intestate's mother shall succeed to the property.

In default of the father, to the mother.

[Bo. Bill, s. 19, see infra, s. 34.] 10. In default of the mother, the widow or widows of the intestate shall succeed to the property.

In default of the mother, to the widows.

[Bo. Bill, s. 20.] 11. In default of widows, the daughters of the intestate shall succeed to the property.

In default of widows, to the daughters.

[Bo. Bill, s. 21.] 12. (*1*) In default of daughters, the sons of daughters shall succeed to the property, the sons of each daughter taking an equal share:

In default of daughters, to daughters' sons and to brothers.

Provided that, if the intestate has left brothers surviving him, the daughters' sons shall succeed to a moiety of the property, the sons of each daughter taking an equal share, and the brothers shall take the other moiety.

(*2*) In default of daughters' sons, the brothers shall take the whole of the property.

[Bo. Bill, s. 22.] 13. In default of brothers, the daughters of the intestate's sons shall succeed to the property, the daughters of each son taking an equal share.

In default of brothers, to sons' daughters.

[Bo. Bill, s. 23.] 14. In default of sons' daughters, the sons of the intestate's brothers shall succeed to the property, the sons of each brother taking an equal share.

In default of sons' daughters, to brothers' sons.

[Bo. Bill, s. 24.] 15. In default of brothers' sons, the half-brothers of the intestate shall succeed to the property.

In default of brothers' sons, to half-brothers.

[Bo. Bill, s. 25.] 16. In default of half-brothers, the sons of half-brothers shall succeed to the property, the sons of each half-brother taking an equal share.

In default of half-brothers, to half-brothers' sons.

[Bo. Bill, s. 26.] 17. In default of sons of half-brothers, the paternal grandfather shall succeed to the property; and in default of the paternal grandfather, the paternal grandmother shall succeed to it.

In default of half-brothers' sons, to the grandfather; and in default of the grandfather, to the grandmother.

[Bo. Bill, s. 27.] 18. In default of the paternal grandmother, the paternal uncles shall succeed to the property.

In default of the grandmother, to paternal uncles.

[Bo. Bill, s. 28.] 19. In default of paternal uncles, the sisters of the intestate shall succeed to the property.

In default of paternal uncles, to sisters.

[Bo. Bill, s. 29.] 20. In default of sisters, the property shall belong to those of the intestate's relatives on the father's side who stand in the nearest degree of kindred to the intestate; and, in default of relatives on the father's side, to those of the intestate's relatives on the mother's side who stand in the nearest degree of kindred to the intestate:

In default of sisters, to the nearest of kin.

Provided that no female relative shall be entitled to share in the property if there is a male relative standing on the same side in the same degree of kindred to the intestate.

The Khojá Succession Bill, 1884.
(Chapter IV.—Of Succession to the Absolute Property of a Female Khojá dying intestate.—Sections 23-27.)
(Chapter V.—Of Property which a Female takes as Restricted Owner, and the further Succession to the same.—Section 28.)

[Bo. Bill, s. 33. See sec. 48, infra.]

When female takes as restricted owner under foregoing sections.

21. If, at the death of the intestate, any of the male heirs mentioned in sections 7 to 18 (both inclusive), or any male relative of the intestate on the father's side not more remote than the seventh degree of kindred to the intestate, is living, a female succeeding under any of the foregoing sections shall take the property as restricted owner.

[Bo. Bill, s. 30.]

Widow's right to retain possession of ornaments.

22. When a male Khojá dies intestate in respect of any ornaments belonging to him, and not being undivided property, which are in the possession of his wife with his consent, and the wife does not acquire the ownership, whether absolute or restricted, of the ornaments under this Act, she shall be entitled to retain possession of them until she dies or re-marries.

CHAPTER IV.

OF SUCCESSION TO THE ABSOLUTE PROPERTY OF A FEMALE KHOJÁ DYING INTESTATE.

[Bo. Bill, s. 38.]

Descent of unmarried female's absolute property.

23. *(1)* When an unmarried female Khojá owning property otherwise than as a restricted owner dies intestate in respect of that property, it shall belong to her brothers; in default of brothers, to her father; in default of the father, to her mother; in default of the mother, to the relatives of the intestate on the father's side who stand in the nearest degree of kindred to the intestate; and, in default of such relatives, to the relatives on the mother's side who stand in the nearest degree of kindred to the intestate.

[Bo. Bill, s. 39.]

(2) If at the death of the intestate any male relative of the intestate on the father's side not more remote than the seventh degree of kindred to the intestate is living, a female succeeding under this section, whether in preference to or together with that male relative, shall take the property as restricted owner.

[Bo. Bill, s. 40.]

Descent of married female's absolute property.

24. *(1)* When a married female Khojá owning property otherwise than as restricted owner dies intestate in respect of that property, it shall belong to her sons and daughters; and the daughters shall take it as restricted owners.

[Bo. Bill, s. 40.]

(2) In default of sons and daughters, the property shall, except as provided in sub-section (3), belong to her husband.

(3) If the property has been given to the female on the occasion of her marriage separately from the "Dej" for her sole use and benefit by her parents or relatives, it shall, in default of sons and daughters, belong—

(a) to her father; and

(b) in default of the father, to the person to whom it would then have belonged if it had been the property of the father at his death and had descended without having been alienated.

(4) A female taking property under clause *(b)* of sub-section (3) shall not take it as restricted owner.

[Bo. Bill, s. 37.]

Descent of absolute property of widow or divorced female leaving lineal descendants within the fourth degree.

25. *(1)* When a female Khojá, being a widow or divorced and owning property otherwise than as restricted owner, dies intestate in respect of that property, leaving legitimate lineal descendants not more remote than the fourth degree, every such descendant shall be entitled to a share of the property unless one of the persons through whom he is descended from the intestate is living.

(2) When the sharers under sub-section *(1)* all stand in the same degree of kindred to the intestate, their shares shall be equal.

[Act X of 1865, s. 33.]

(3) When the sharers under sub-section (1) do not all stand in the same degree of kindred to the intestate, the property shall be divided into such a number of equal shares as may correspond with the number of the sharers who stood in the nearest degree of kindred to her at her decease, and of lineal descendants of the like degree of kindred who died before her and through whom the other sharers are descended from her; and one such share shall be allotted to each of the sharers who stood in the nearest degree of kindred to the intestate at her decease; and one such share shall be allotted in respect of each such deceased descendant; and the share allotted in respect of each such deceased descendant shall be divided among the sharers descended through him, in such manner that the children of any person shall always take what that person would have been entitled to if he had survived the intestate.

[Bo. Bill, s. 37.]

Where there are no such lineal descendants.

26. *(1)* In default of the descendants mentioned in section 25, the property shall belong to the brothers of the intestate; in default of brothers, to her father; in default of the father, to her mother.

(2) In default of the mother, the property shall belong to the relatives of the intestate on the father's side who stand in the nearest degree of kindred, and, in default of such relatives, to the relatives of the intestate on the mother's side who stand in the nearest degree of kindred.

[Bo. Bill, s. 32.]

When female taking under section 25 or 26 takes as restricted owner.

27. If, at the death of the intestate, any of the male heirs mentioned in section 25 and the first sub-section of section 26, or any male relative of the intestate on the father's side not more remote than the seventh degree of kindred to the intestate, is living, a female succeeding under section 25 or section 26, whether in preference to or together with that heir or relative, shall take the property as restricted owner.

CHAPTER V.

OF PROPERTY WHICH A FEMALE TAKES AS RESTRICTED OWNER, AND THE FURTHER SUCCESSION TO THE SAME.

[Bo. Bill, s. 3; "life-estate," "stridhan."]

Nature of restricted ownership generally.

28. A female taking property as restricted owner shall be absolutely entitled to the use of, and the income accruing from, that property during her life, and, except as otherwise provided by this Act, shall have all the other rights and powers of an absolute owner in respect of that property.

The Khojá Succession Bill, 1884.
(Chapter V.—Of Property which a Female takes as Restricted Owner, and the further Succession to the same.—Sections 29-36.)

[Bo. Bill, s. 3; "life-estate."]

Powers of alienation limited.

29. Except as provided by section 31, no right to, over or in respect of property created by a restricted owner of that property shall have effect for any time beyond her life:

[New.]

Provided that nothing in this section shall affect a lease granted at a fair rent for a term not exceeding twenty years, and without payment of any fine or premium, or a right created for consideration in favour of a person acting in good faith, and without notice of the ownership being restricted.

[Act II of 1882, s. 3.]

Explanation.—A person has notice of the ownership being restricted when he actually knows that it is restricted, or when, but for wilful abstention from enquiry or gross negligence, he would have known it, or when information of it is given to, or obtained by, his agent under the circumstances mentioned in the Indian Contract Act, 1872, section 229.

IX of 1872.

Obligations of restricted owner.

30. A female taking property as restricted owner shall be bound, so far as it is possible for her to do so without applying her other property for that purpose,—

(a) to preserve the substance of the property without any material alteration, deterioration or diminution except such as may be essential to the realization of the full income of it in a reasonable manner, and to deal with it in all respects as carefully as a person of ordinary prudence would deal with property which he hoped to transmit in good condition to his heirs; and

[Act II of 1882, s. 13.]

(b) to make such payments, institute, maintain and defend such suits and other proceedings, and take such other steps as, regard being had to the nature and amount or value of the property, may be reasonably requisite for the assertion and protection of the title thereto, for the protection of the interest of those who are to take it after her, or for the recovery of any portion of it which is not in her possession.

[Bo. Bill, s. 3; "life-estate."]

Restricted owner's power of transfer.

31. A female taking property as restricted owner shall have power to transfer the same, so that the transfer may have effect beyond her life when, the income being insufficient, such transfer is necessary in order to raise money for any of the following purposes, namely:—

(a) to discharge any of the obligations imposed by section 30;

(b) to discharge the debts of the absolute owner from whom the property descended;

(c) to provide for the maintenance of any persons entitled under this Act to have their maintenance provided for out of the property, for the payment of any marriage expenses or funeral expenses payable under this Act out of the property, and for the performance of any ordinary family ceremonies; and

(d) to support herself where she has no other sufficient means of support.

Power to apply to sanction a transfer under section 31.

32. *(1)* A restricted owner of property may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction to sanction any transfer of that property which she proposes to make under section 31.

(2) The petition must state the names of all the persons interested in the application so far as they can be ascertained, and must be verified by the applicant or by some other competent person in the manner required by law for the verification of 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, that person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code. XLV of 1860.

(3) A copy of the petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(4) A transfer made with the sanction of a Court obtained under this section shall be deemed to be warranted by section 31.

[New.]

Power to direct money raised to be paid into Court.

33. A Court dealing with an application under section 32 may, if it thinks fit, sanction the transfer proposed subject to the condition that the money raised by the transfer shall be paid into Court or to trustees apppointed by the Court, and may give such further directions as it thinks fit with a view to ensuring that the money shall be applied to the purpose for which it is raised, or that any balance thereof which is not required for that purpose, shall be secured for the benefit of those who would take the property after the restricted owner.

Effect of sale in execution against restricted owner.

34. When property belonging to a female as restricted owner is sold in execution of a decree passed against her, the interest taken by the purchaser shall cease on her death,—

except when, without any collusion between her and the plaintiff,—

(a) the decree is passed against her as representative of the absolute owner from whom the property descended; or

(b) the decree is one for sale passed on a mortgage made under section 31 so as to take effect beyond the life of the female.

Effect of decision or compromise to which the restricted owner is a party.

35. A decision in any suit or other proceeding, or a compromise of any dispute, relating to the property to which the restricted owner is a party, shall, except where she acts in collusion with the party opposed to her, bind those who take the property after her under this Act in the same manner and to the same extent as if she were an absolute owner of the property.

Effect of lapse of time during continuance of restricted ownership.

36. In any case in which, under any enactment for the time being in force, an owner of property would by lapse of time lose any right to, over or in respect of that property, or any means of enforcing any such right, or another person would by lapse of time acquire any right to, over or in respect of that property, any period which elapses during the continuance of the restricted ownership shall be reckoned as against those taking the property after the termination of that ownership in the same manner and to the same extent as if the restricted owner had been an absolute

The Khojá Succession Bill, 1884.

(Chapter VI.—Of Wills of Khojás.—Sections 42-43.)

owner of the property and it had been taken by them as her heirs.

[Bo. Bill, s. 39.]

Further descent of property held by unmarried female as restricted owner.

37. (*1*) When property has descended to a female as restricted owner and she dies unmarried, it shall belong to the person to whom it would then have belonged if she had died before the absolute owner from whom it descended and it had descended under this Act without having been alienated.

(*2*) In default of such person, the property shall descend as if the female were not a restricted owner.

[Bo. Bill, s. 41.]

Further descent of restricted property of married or divorced female or widow.

38. (*1*) When property has descended to a female as restricted owner and she dies, being at the time of her death married, a widow or divorced from her husband, the property shall be divided among her legitimate lineal male descendants, not being more remote than the fourth degree, those nearest in degree of kindred to her excluding the more remote, and, when those nearest in degree are not her sons, the property being so divided amongst them that the sons of any person shall take the share which he would have taken if the fathers of all had survived the restricted owner.

(*2*) In default of legitimate lineal male descendants as aforesaid, the property shall belong to the daughters of the deceased; in default of daughters, the property shall belong to the legitimate lineal male descendants of daughters, not being more remote from the deceased than the fourth degree, those nearest in degree excluding the more remote; the descendants of each daughter, when they take, taking an equal share, and when they are not sons of the daughters, that share being so divided among them that the sons of any person shall take what he would have taken if the fathers of all had survived the restricted owner.

(*3*) In default of legitimate lineal male descendants of daughters as aforesaid, the property shall belong to the person to whom it would then have belonged if the restricted owner had died before the absolute owner from whom it descended, and it had descended under this Act without having been alienated.

(*4*) In default of such person, the property shall descend as if the female were not a restricted owner.

[Bo. Bill, s. 32.]

When female taking property under sections 37 and 38 takes as restricted owner.

39. When property, having descended to a female as restricted owner, subsequently descends to another female under section 37, sub-section (1), or section 38, sub-section (3), that female shall take it as restricted owner.

[Bo. Bill, s. 19.]

Widows taking together as restricted owners to have a right of survivorship.

40. Notwithstanding anything in the foregoing sections, when two or more widows of a deceased Khojá take his property under this Act as restricted owners,—

(1) there shall be as between them a right of survivorship in respect of that property;

(2) the proviso to section 29 shall not apply to any lease of or any right to, over or in respect of the property, or any part or share thereof, granted or created by one or more of them without the consent in writing of the other or others of them then surviving;

(3) section 31 and section 32 shall not apply to any transfer made by one or more of them without the consent in writing of the other or others of them then surviving;

(4) section 35 shall not apply to any decision in any suit or proceeding or to any compromise unless all of them then surviving are parties to that suit, proceeding or compromise.

Effect of re-marriage of widow claiming or holding as restricted owner.

41. Notwithstanding anything in the foregoing sections, a widow marrying again after her husband's death shall not be entitled to take as restricted owner his property or any property of any of his lineal descendants which has descended to them from him; and a widow taking any such property as restricted owner under the foregoing sections and subsequently marrying again shall, for the purpose of applying sections 28, 29, 34, 38 and 40, to that property, be deemed to have died. [Bo. Bill, s. 34: Act XV of 1856, s. 2.]

CHAPTER VI.

OF WILLS OF KHOJÁS.

Extension of portions of Act X of 1865 with certain modifications to wills of Khojás.

42. Subject to the provisions of this Act, the portions of the Indian Succession Act, 1865, set forth in the schedule hereto annexed, with the modifications shown in that schedule, shall, notwithstanding anything contained in section 331 of that Act, apply to all wills made by a Khojá, whether male or female, dying on or after the first day of January eighteen hundred and eighty-five; and [Bo. Bill, ss. 4, 5 & 6.] X of 1865.

in the portions of the Act so applying all words defined in section 3 of the Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as that section has attached to them respectively;

Provided that—

(*a*) For the purpose of the portions of the Act so applying, no person to whom the Indian Majority Act, 1875, applies shall be deemed to have attained his majority before the time specified in this behalf in that Act. IX of 1875.

(*b*) A bequest by a Khojá in favour of any person who has not come into existence at the death of the testator, or in favour of a class of persons any one of whom has not come into existence at that time, shall be void.

(*c*) When a bequest is void under clause (*b*), any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest shall also be void.

Bequest of property to woman without power to transfer or charge.

43. Notwithstanding anything contained in the foregoing sections, a Khojá may bequeath property to or for the benefit of a woman so that she shall not have power to transfer or charge the same or her beneficial interest therein. [Act IV of 1882, s. 10.]

The Khojá Succession Bill, 1884.

(Chapter VII.—Of Maintenance and Marriage and Funeral Expenses.—Secs. 44-47).

(Chapter VIII.—Miscellaneous.—Sections 48-51.)

CHAPTER VII.

OF MAINTENANCE AND MARRIAGE AND FUNERAL EXPENSES.

[Bo. Bill, ss. 34 & 43.]

Maintenance and funeral expenses payable out of intestate's property.

44. (*1*) The amount requisite for the maintenance of the following persons and the amount of their necessary funeral expenses shall, if they do not possess or leave means sufficient for the purpose, be payable out of any property of a deceased male Khojá in respect of which he has died intestate.

(*2*) The persons referred to are—

(*a*) the widow or widows of the deceased Khojá and the widows of his legitimate lineal male descendants, provided they have not married again;

(*b*) every daughter and sister (whether legitimate or not) of the deceased Khojá, and every legitimate daughter of his son, grandson or great-grandson, except when she has been married and her husband is living;

(*c*) the father, mother, grandfather and grandmother of the deceased Khojá; and

(*d*) his illegitimate sons until they attain their majority.

[Bo. Bill, s. 44.]

Marriage expenses payable out of intestate's property.

45. The expenses of the first or only marriage of every daughter (whether legitimate or not) of a deceased male Khojá, and of every legitimate daughter of his deceased son, grandson or great-grandson, if not otherwise sufficiently provided for, shall be payable out of any of his property in respect of which he has died intestate.

[Bo. Bill, s. 45.]

Maintenance and funeral expenses payable out of property of testator.

46. If a male Khojá dies leaving a legitimate lineal male descendant who has not attained his majority, or a daughter who is unmarried or a widow, and having disposed of his property by will in such a manner as to leave that descendant, daughter or widow without sufficient means for the purpose, the amount requisite for the maintenance, of the descendant during his minority, or of the daughter while she remains unmarried or of the widow until her death or re-marriage (as the case may be) shall be payable out of the testator's property; and if the descendant dies before he attains his majority or the daughter dies unmarried or the widow dies without re-marrying, his or her necessary funeral expenses shall be payable out of that property.

[New.]

Recovery of sums claimable under sections 44, 45 and 46.

47. Any sum claimable for maintenance or marriage expenses or funeral expenses under section 44, section 45 or section 46 out of any property of a deceased male Khojá shall be recoverable as if it was due under a contract made by the Khojá in his lifetime and he had died leaving only that property:

Provided that—

first, the property shall be applied to the payment of debts due by the deceased before being applied to the payment of sums so claimable;

secondly, no decree shall be passed for arrears of any allowance on account of maintenance unless the amount of the allowance has been fixed by agreement or by order of a Court; and

thirdly, when a suit is instituted for the purpose of having any such allowance fixed against a person taking the property by intestate succession, and that person is able and willing to maintain or provide for the maintenance of the person by or on whose behalf the suit is instituted, and gives security to the satisfaction of the Court for his so doing, the Court may, if it thinks fit, dismiss the suit.

CHAPTER VIII.

MISCELLANEOUS.

Property when to go to the Crown.

48. When a Khojá dies intestate in respect of any of his property, and there is no person entitled to take that property under the foregoing sections, it shall go to the Crown. [Bo. Bill, s. 42. Act X of 1865, s. 28.]

Females succeeding under this Act to take as males, except in certain cases.

49. Except as otherwise provided by this Act—

(*1*) a female taking property by intestate succession under this Act shall have the same interest in it, and the same powers in respect of it, as if she were a male; and

(*2*) a female taking property under any testamentary disposition under this Act shall have the same interest in it, and the same powers in respect of it, as a male taking under a like disposition.

Guardianship of children where widow re-marries.

50. If a widow of a deceased Khojá, not having been appointed by his will to be guardian for his children, marries again, she shall not be entitled as of right to be appointed guardian of the children by a Court under any law for the time being in force relating to the appointment of guardians, and, when she has before her re-marriage been so appointed, a Court having jurisdiction to appoint a guardian for the children may in its discretion remove her from the guardianship. [Bo. Bill, s. 35. Act XV of 1856, s. 3.]

Property transferable by gift made in contemplation of death.

51. A Khojá may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

A gift is said to be made in contemplation of death where a person who is ill and expects to die shortly of his illness delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

When gift said to be made in contemplation of death.

Such gift resumable.

Such a gift may be resumed by the giver.

It does not take effect if he recovers from the illness during which it was made, nor if he survives the person to whom it was made.

When it fails.

The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

Illustrations.

(*a.*) A being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death—

a watch:

a bond granted by C to A:

a bank-note:

a promissory note of the Government of India endorsed in blank:

a bill of exchange endorsed in blank:

certain mortgage-deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—

the watch:

the debt secured by C's bond:

the bank-note:

the promissory note of the Government of India:

the bill of exchange:

the money secured by the mortgage-deeds.

(*b.*) A being ill, and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

(*c.*) A being ill and in expectation of death, puts aside certain articles in separate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

SCHEDULE.

(*See Section 42.*)

PORTIONS OF THE INDIAN SUCCESSION ACT (X OF 1865) MODIFIED FOR APPLICATION TO WILLS MADE BY KHOJÁS.

Note.—Modifications are shewn in italics; omissions by asterisks.

PART VII.

Of Wills and Codicils.

Persons capable of making wills.

46. Every person of sound mind and not a minor may dispose of his property by will.

Explanation 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf, or dumb, or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

Illustrations.

(*a.*) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(*b.*) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid will.

(*c.*) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

Testamentary guardian.

47. A father, whatever his age may be, may by will appoint a guardian or guardians for his child during minority.

Will obtained by fraud, coercion or importunity.

48. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Illustrations.

(*a.*) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a will in his, A's, favour; such will has been obtained by fraud and is invalid.

(*b.*) A by fraud and deception prevails upon the testator to bequeath a legacy to him. The bequest is void.

(*c.*) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(*d.*) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(*e.*) A being of sufficient intellect, if undisturbed by the influence of others, to make a will, yet being so much under the control of B that he is not a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(*f.*) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport, and does so merely to purchase peace, and in submission to B. The will is invalid.

(*g.*) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(*h.*) A, with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

Will may be revoked or altered.

49. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

PART VIII.

Of the Execution of Unprivileged Wills.

Execution of unprivileged wills.

50. Every testator, not being a soldier employed in an expedition, or engaged in actual warfare, or a mariner at sea, must execute his will according to the following rules:—

First.—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that [illegible]

The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

intended thereby to give effect to the writing as a will.

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign *or affix his mark to* the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Incorporation of papers by reference.

51. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

PART IX.

Of Privileged Wills.

Privileged wills.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made as is mentioned in the fifty-third section. Such wills are called privileged wills.

Illustrations.

(*a.*) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(*b.*) A is at sea in a merchant-ship, of which he is the purser. He is a mariner, and being at sea can make a privileged will.

(*c.*) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(*d.*) A, a mariner of a ship in the course of a voyage, is temporarily on shore, while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(*e.*) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(*f.*) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

Mode of making, and rules for executing, privileged wills.

53. Privileged wills may be in writing, or may be made by word of mouth.

The execution of them shall be governed by the following rules:—

First.—The will may be written wholly by the testator, with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will, if it be shown that it was written by the testator's directions, or that he recognized it

If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed, the instrument shall not by reason of that circumstance be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

Fourth.—If the soldier or mariner shall have written instructions for the preparation of his will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his will.

Fifth.—If the soldier or mariner shall, in the presence of two witnesses, have given verbal instructions for the preparation of his will, and they shall have been reduced into writing in his lifetime, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will.

PART X.

Of the Attestation, Revocation, Alteration and Revival of Wills.

* * * * * * * * *

Witness not disqualified by interest or by being executor.

55. No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

* * * * * * * * *

Revocation of unprivileged will or codicil.

57. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than * * * * * by another will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Illustrations.

(*a.*) A has made an unprivileged will. Afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(*b.*) A has made an unprivileged will. Afterwards, A being entitled to make a privileged will, makes a privileged will which purports to revoke his unprivileged will. This is a revocation.

Effect of obliteration, interlineation or alteration in unprivileged will.

58. No obliteration, interlineation or other alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will

as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Revocation of privileged will or codicil.

59. A privileged will or codicil may be revoked by the testator, by an unprivileged will or codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation.—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged will.

Revival of unprivileged will.

60. No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same;

Extent of revival of will or codicil partly revoked and afterwards wholly revoked.

and when any will or codicil which shall be partly revoked and afterwards wholly revoked shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

PART XI.

Of the Construction of Wills.

Wording of will.

61. It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

Enquiries to determine questions as to object or subject of will.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court must inquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations.

(*a.*) A, by his will, bequeaths 1,000 rupees to his eldest son or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies.

(*b.*) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest, that is, what estate the testator called Black Acre.

(*c.*) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

Misnomer or misdescription of object.

63. Where the words used in the will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(*a.*) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(*b.*) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(*c.*) The testator bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(*d.*) The testator gives his residuary estate to be divided among "his seven children," and proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(*e.*) The testator, having six grand-children, makes a bequest to "his six grand-children," and proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(*f.*) The testator bequeaths "1,000 rupees to each of the three children of A." At the date of the will A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

When words may be supplied.

64. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

Rejection of erroneous particulars in description of subject.

65. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous and the bequest shall take effect.

Illustrations.

(*a.*) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, but had no marsh-lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh-lands of the testator lying in L shall pass by the bequest.

(*b.*) The testator bequeaths to A "his zamíndárí of Rámpúr." He had an estate at Rámpúr, but it was a taluq and not a zamíndárí. The taluq passes by this bequest.

When part of description may not be rejected as erroneous.

66. If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description because the testator has no property which answers to the whole of it.

Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under the sixty-fifth section are to be considered as struck out of the will.

Illustrations.

(*a.*) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

(*b.*) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X, comprising 1,000 bighás of land." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

Extrinsic evidence admissible in case of latent ambiguity.

67. Where the words of the will are unambiguous, but it is found by extrinsic evidence that they admit of applications one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Illustrations.

(*a.*) A man, having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(*b.*) A, by his will, leaves to B "his estate called Sultánpur Khurd." It turns out that he had two estates called Sultánpur Khurd. Evidence is admissible to show which estate was intended.

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

68. Where there is an ambiguity or deficiency on the face of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations.

(*a.*) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under the seventy-sixth section.

(*b.*) A bequeaths 1,000 rupees to , leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(*c.*) A bequeaths to B rupees, or "his estate of ." Evidence is not admissible to show what sum or what estate the testator intended to insert.

Meaning of clause to be collected from entire will.

69. The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a codicil is to be considered as part of the will.

Illustrations.

(*a.*) The testator gives to B a specific fund or property at [illegible] of A, and by a subsequent clause gives the whole property to A. The effect of the several clauses taken together is to give the specific fund or property in A for life only to B; it appearing from the bequest to B that the testator, in making the bequest to A, intended to [illegible]

(*b.*) Where a testator, having an estate one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said, "I give Black Acre to B and all the rest of my estate to A."

When words may be understood in restricted sense, and when in sense wider than usual.

70. General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

Illustrations.

(*a.*) A testator gives to A "his farm in the occupation of B," and to C "all his marsh-lands in L." Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in L. The general words, "all his marsh-lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(*b.*) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons and chest of clothes, and to his friend A (a shipmate) his red box, clasp-knife and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(*c.*) A, by his will, bequeathed to B all his household furniture, plate, linen, china, books, pictures and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest, B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

Which of two possible constructions preferred.

71. Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

No part rejected, if it can be reasonably construed.

72. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

Interpretation of words repeated in different parts of will.

73. If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

Testator's intention to be effectuated as far as possible.

74. The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

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The last of two inconsistent clauses prevails.

75. Where two clauses or gifts in a will are irreconcileable, so that they cannot possibly stand together, the last shall prevail.

Illustration.

(*a.*) The testator by the first clause of his will leaves his estate of Rámnagar "to A," and by the last clause of his will leaves it "to B and not to A." B shall have it.

(*b.*) If a man at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition shall prevail.

76. A will or bequest not expressive of any de[illegible]

The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

Illustration.

If a testator says—"I bequeath goods to A"; or "I bequeath to A"; or "I leave to A all the goods mentioned in a schedule," and no schedule is found; or "I bequeath 'money,' 'wheat,' 'oil,'" or the like, without saying how much, this is void.

77. The description contained in a will, of property the subject of gift, shall, unless a contrary intention appear by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

Words describing subject refer to property answering description at testator's death.

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82. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.

Bequest without words of limitation.

83. Where property is bequeathed to a person with a bequest in the alternative to another person or to a class of persons, if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect; but if he be then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

Bequest in alternative.

Illustrations.

(*a.*) A bequest is made to A or to B. A survives the testator. B takes nothing.

(*b.*) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(*c.*) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(*d.*) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(*e.*) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.

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84. Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

Effect of words describing a class added to bequest to a person.

Illustrations.

(*a.*) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors and administators.

In each of these cases, A takes the whole interest which the testator had in the property.

(*b.*) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

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85. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Bequest to class of persons under general description only.

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88. Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first, if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will:—

Rules of construction where will purports to make two bequests to same person.

First.—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will and again in a codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

Third.—Where two legacies of unequal amount are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word "will" does not include a codicil.

Illustrations.

(*a.*) A having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the will concludes with the words "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal.

(*b.*) A having one diamond-ring, which was given him by B, bequeathed to C the diamond-ring which was given him by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond-ring which was given him by B. C can claim nothing except the diamond-ring which was given to A by B.

(*c*) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, in the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(*d.*) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, bequeaths to B the sum of 5,000 rupees. B is entitled to 11,000 rupees.

(*e.*) A, by his will, bequeaths to B 5,000 rupees, and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(*f.*) A, by one codicil to his will, bequeaths to B 5,000 rupees, and by another codicil, bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(*g.*) A, by his will, bequeaths "500 rupees to B because she was his nurse," and in another part of the will bequeaths 500 rupees to B "because she went to England with his children." B is entitled to receive 1,000 rupees.

(*h.*) A, by his will, bequeaths to B the sum of 5,000 rupees and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(*i*) A, by his will, bequeaths to B the sum of 5,000 rupees and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and take a contingent interest in another sum of 5,000 rupees.

89. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Constitution of residuary legatee.

The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

Illustrations.

(*a.*) A makes her will, consisting of several testamentary papers, in one of which are contained the following words:—"I think there will be something left, after all funeral expenses, &c., to give to B now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(*b.*) A makes his will, with the following passage at the end of it:—"I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure." B is constituted the residuary legatee.

(*c.*) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

90. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Property to which residuary legatee entitled.

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91. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and, if he dies without having received it, it shall pass to his representatives.

Time of vesting of legacy in general terms.

92. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

In what case legacy lapses.

In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(*a.*) The testator bequeaths to B "500 rupees which B owes him." B dies before the testator; the legacy lapses.

(*b.*) A bequest is made to A and his children. A dies before the testator or happens to be dead when the will is made. The legacy to A and his children lapses.

(*c.*) A legacy is given to A, and in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(*d.*) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator. B survives the testator. The bequest to B takes effect.

(*e.*) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(*f.*) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will laspe.

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

Legacy does not lapse if one of two joint legatees die before testator.

Illustration.

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

94. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it; then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Effect of words showing testator's intention to give distinct shares.

Illustration.

A sum of money is bequeathed to A, B and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

95. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.

When lapsed share goes as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

96. Where a bequest shall have been made to any *son or other legitimate lineal male descendant* of the testator, and the legatee shall die in the lifetime of the testator, but any *legitimate* lineal *male* descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

When bequest to testator's lineal descendant does not lapse on his death in testator's lifetime.

Illustration.

A makes his will, by which he bequeaths a sum of money to his son B for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his will whereby he bequeaths all his property to his widow D. The money goes to D.

97. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

Bequest to A for benefit of B does not lapse by A's death.

98. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

Survivorship in case of bequest to described class.

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Illustrations.

(*a.*) A bequeaths 1,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D and E. E died after the date of the will, but for the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(*b.*) A bequeaths a legacy to the children of B. At the time of the testator's death, B has no chidren. The bequest is void.

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PART XII.

OF VOID BEQUESTS.

99. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Bequest to person by particular description, who is not in existence at testator's death.

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Illustrations.

(*a.*) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator B has no son. The bequest is void.

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The Khojá Succession Bill, 1884.

(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease.

Rule against perpetuity.

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102. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the last preceding section, such bequest shall be wholly void.

Bequest to a class, some of whom may come under rules in section 101.

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103. Where a bequest is void by reason of any of the rules contained in the *two* last preceding sections, any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void.

Bequest to take effect on failure of bequest void under section 101 or 102.

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104. A direction to accumulate the income arising from any property shall be void; and the property shall be disposed of as if no accumulation had been directed.

Effect of direction for accumulation.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death;

and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(*a.*) The will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal, together with the accumulations, shall then be divided between A, B and C. A, B and C are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(*b.*) The will directs that 10,000 rupees shall be invested and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(*c.*) The will directs that the rents of the farm of Sultánpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living, named B. B shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

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(*e.*) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the will, but in consequence of B's minority.

PART XIII.

OF THE VESTING OF LEGACIES.

106. Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy.

Date of vesting of legacy when payment or possession postponed.

And in such cases the legacy is from the testator's death said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Illustrations.

(*a.*) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(*b.*) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(*c.*) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(*d.*) A fund is bequeathed to A until B attains the age of 18, and then to B. The legacy to B is vested in interest from the testator's death.

(*e*) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(*f.*) A fund is bequeathed to A, B and C in equal shares, to be paid to them on their attaining the age of 18 respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B and C, subject to be devested in case A, B and C shall all die under 18, and upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

107. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

Date of vesting when legacy contingent upon specified uncertain event.

A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that age; or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Illustrations.

(*a.*) A legacy is bequeathed to D in case A, B and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B and C all die under 18, or one of them attains that age.

(*b.*) A sum of money is bequeathed to A "in case he shall attain the age of 18," or, "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(*c.*) An estate is bequeathed to A for life, and after his death to B, if B shall then be living; but if B shall not be then living, to C. A, B and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

The Khojá Succession Bill, 1884.

(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

(*d.*) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(*e.*) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that, if she shall not attain 18, or marry under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy, although she may have married under 18 without the consent of B.

(*f.*) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfiled by A's marrying.

(*g.*) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of Insolvent Debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(*h.*) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(*i.*) A leaves his farm of Sultánpur Khurd to B, if B shall convey his own farm of Sultánpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(*j.*) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent, until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence, within that period, of an event which makes the fulfilment of the condition impossible.

(*k.*) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(*l.*) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(*m.*) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

108. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Vesting of interest in bequest to such members of a class as shall have attained particular age.

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PART XIV.

OF ONEROUS BEQUESTS.

109. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Onerous bequest.

Illustration.

A having shares in (X), a prosperous joint stock company, and also shares in (Y), a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

110. Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

One of two separate and independent bequests to same person may be accepted, and other refused.

Illustration.

A bequeaths to B a term of years of a house at a rent [illegible] and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not by this refusal forfeit the money.

PART XV.

OF CONTINGENT BEQUESTS.

111. Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable.

Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.

Illustrations.

(*a.*) A legacy is bequeathed to A, and in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(*b.*) A legacy is bequeathed to A, and in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

(*c.*) A legacy is bequeathed to A when and if he attains the age of 18, and in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(*d.*) A legacy is bequeathed to A for life and after his death to B, and, "in case of B's death without children," to C. The words "in case of B's death without children" are to be understood as meaning in case B shall die without children during the lifetime of A.

(*e.*) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death," to C. The words "in case of B's death without children" are to be considered as meaning "in case B shall die in the lifetime of A."

112. Where a bequest is made to such of certain persons as shall be surviving at some period but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the will.

Bequest to such of certain persons as shall be surviving at some period not specified.

Illustrations.

(*a.*) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(*b.*) Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

(*d.*) Property is bequeathed to A for life, and after his death to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

PART XVI.

OF CONDITIONAL BEQUESTS.

113. A bequest upon an impossible condition is void.

Bequest upon impossible condition.

Illustrations.

(*a.*) An estate is bequeathed to A on condition that he shall walk one hundred miles in an hour. The bequest is void.

(*b.*) A bequeaths 500 rupees to B on condition that he shall marry A's daughter who died in the [illegible]

The Khojá Succession Bill, 1884.

(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

114. A bequest upon a condition the fulfilment of which would be contrary to law or to morality is void.

Bequest upon illegal or immoral condition.

Illustrations.

(*a.*) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(*b.*) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

115. Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Fulfilment of condition precedent to vesting of legacy.

Illustrations.

(*a.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(*b.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(*c.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

(*d.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(*e.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(*f.*) A makes his will, whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(*g.*) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

116. Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Bequest to A and on failure of prior bequest, to B.

Illustrations.

(*a.*) A bequeaths a sum of money to his own children surviving him, and if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(*b.*) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

117. Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

When second bequest not to take effect on failure of first.

Illustration.

A makes a bequest to his wife, but in case she should die in his lifetime bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

118. A bequest may be made to any person with the condition superadded that in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or, that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.

Bequest over, conditional upon happening or not happening of specified uncertain event.

In each case the ulterior bequest is subject to the rules contained in sections 107, 108, 109, 110, 111, 112, 113, 114, 116, 117.

Illustrations.

(*a.*) A sum of money is bequeathed to A, to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be devested and to go to B in case A shall die under 18.

(*b.*) An estate is bequeathed to A with a proviso that, if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

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(*d.*) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survior living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money and the representative of B takes the other half.

(*e.*) A bequeaths to B the interest of a fund for life, and directs the fund to be divided, at her death, equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

119. An ulterior bequest of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Condition must be strictly fulfilled.

Illustrations.

(*a.*) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(*b.*) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(*c.*) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that, if A dies under 18, or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

120. If the ulterior bequest be not valid, the original bequest is not affected by it.

Original bequest not affected by invalidity of second.

Illustrations.

(*a.*) An estate is bequeathed to A for his life, with a condition superadded that if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will.

(*b.*) An estate is bequeathed to A for her life, and if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(*c.*) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under section 92, and A is entitled to the estate during his life.

The Khojá Succession Bill, 1884.

(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

121. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.

Illustrations.

(*a.*) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood; he loses his life-interest in the estate.

(*b.*) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(*c.*) An estate is bequeathed to A, provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(*d.*) An estate is bequeathed to A, with a proviso that, if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(*e.*) A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

122. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the one hundred and seventh section.

Such condition must not be invalid under section 107.

123. Where a bequest is made with a condition superadded that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect, but no time is specified for the performance of the act, if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Result of legatee rendering impossible or indefinitely postponing act for which no time specified and on non-performance of which subject-matter to go over.

Illustrations.

(*a.*) A bequest is made to A with a proviso that, unless he enters the army, the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(*b.*) A bequest is made to A with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

124. 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 shall be requisite to make up for the delay caused by such fraud.

Performance of condition, precedent or subsequent, within specified time.

Further time in case of fraud.

PART XVII.

Of Bequests with directions as to application or enjoyment.

125. Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Direction that funds be employed in particular manner following absolute bequest of same to or for benefit of any person.

Illustration.

A sum of money is bequeathed towards purchasing a country-residence for A, or to purchase an annuity for A, or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

126. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.

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127. Where a testator does not absolutely bequeath a fund so as to sever it from his own estate, but gives it for certain purposes and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Bequest of fund for certain purposes, some of which cannot be fulfilled.

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PART XVIII.

Of Bequests to an Executor.

128. If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will or otherwise manifests an intention to act as executor.

Legatee named as executor cannot take unless he shews intention to act as executor.

Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.

PART XIX.

Of Specific Legacies.

129. Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Specific legacy defined.

The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

Illustrations.

(*a.*) A bequeaths to B—
"the diamond-ring presented to him by C:"
"his gold chain:"
"a certain bale of wool:"
"a certain piece of cloth:"
"all his household-goods, which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death:"
"the sum of 1,000 rupees in a certain chest:"
"the debt which B owes him:"
"all his bills, bonds and securities belonging to him lying in his lodgings in Calcutta:"
"all his furniture in his house in Calcutta:"
"all his goods on board a certain ship then lying in the river Hughly:"
"2,000 rupees which he has in the hands of C:"
"the money due to him on the bond of D:"
"his mortgage on the Rámpur factory:"
"one-half of the money owing to him on his mortgage of Rámpur factory:"
"1,000 rupees being part of a debt due to him from C:"
"his capital stock of 1,000 *l.* in East India stock:"
"his promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan:"
"all such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company:"
"all the wine which he may have in his cellar at the time of his death:"
"such of his horses as B may select:"
"all his shares in the Bank of Bengal:"
"all the shares in the Bank of Bengal which he may possess at the time of his death:"
"all the money which he has in the 5½ per cent. loan of the Government of India:"
"all the Government-securities he shall be entitled to at the time of his decease."

Each of these legacies is specific.

(*b.*) A having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B.

The legacy is specific.

(*c.*) A having property at Benares, and also in other places, bequeaths to B all his property at Benares.

The legacy is specific.

(*d.*) A bequeaths to B—
his house in Calcutta:
his zamíndárí of Rámpur:
his taluq of Rámnagar:
his lease of the indigo-factory of Salkya:
an annuity of 500 rupees out of the rents of his zamíndárí of W.

A directs his zamíndárí of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

(*e.*) A by his will charges his zamíndárí of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamíndárí to D. Each of these bequests is specific.

(*f.*) A bequeaths a sum of money—
to buy a house in Calcutta for B:
to buy an estate in zila Faridpur for B:
to buy a diamond-ring for B:
to buy a horse for B:
to be invested in shares in the Bank of Bengal for B:
to be invested in Government-securities for B.

A bequeaths to B—
"a diamond-ring:"
"a horse:"
"10,000 rupees worth of Government securities:"
"an annuity of 500 rupees:"
"2,000 rupees, to be paid in cash:"
"so much money as will produce 5,000 rupees 4 per cent. Government-securities."

These bequests are not specific.

(*g.*) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England.

No one of these legacies is specific.

130. Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds or securities in which it is invested are described in the will.

Bequest of sum certain where stocks, &c., in which invested are described.

Illustration.

A bequeaths to B—
"10,000 rupees of his funded property:"
"10,000 rupees of his property now invested in shares of the East Indian Railway Company:"
"10,000 rupees at present secured by mortgage of Rámpur factory."

No one of these legacies is specific.

131. Where a bequest is made in general terms of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.

Illustration.

A bequeaths to B 5,000 rupees 5 per cent. Government securities. A had at the date of the will five per cent. Government securities for 5,000 rupees.

The legacy is not specific.

132. A money-legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Bequest of money where not payable until part of testator's property disposed of in certain way.

Illustrations.

A bequeaths to B 10,000 rupees, and directs that this legacy shall be paid as soon as A's property in India shall be realized in England.

The legacy is not specific.

133. Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

When enumerated articles not deemed specifically bequeathed.

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136. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

PART XX.

Of Demonstrative Legacies.

137. Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Demonstrative legacy defined.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that—

where specified property is given to the legatee, the legacy is specific;

where the legacy is directed to be paid out of specified property, it is demonstrative.

Illustrations.

(*a.*) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific; the legacy to C is demonstrative.

(*b.*) A bequeaths to B—
"ten bushels of the corn which shall grow in his field of Greenacre:"
"80 chests of the indigo which shall be made at his factory of Rámpur:"
"10,000 rupees out of his five per cent. promissory notes of the Government of India:"
an annuity of 500 rupees "from his funded property:"
"1,000 rupees out of the sum of 2,000 rupees due to him by C."

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his taluq of Rámnagar.

A bequeaths to B—
"10,000 rupees out of his estate at Rámnagar," or charges it on his estate at Rámnagar:
"10,000 rupees, being his share of the capital embarked in a certain business."

Each of these bequests is demonstrative.

138. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

Illustration.

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

PART XXI.

Of Ademption of Legacies.

139. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation

Ademption explained.

Illustrations.

(*a.*) A bequeaths to B—
"the diamond-ring presented to him by C:"
"his gold chain:"
"a certain bale of wool:"
"a certain piece of cloth:"
"all his household-goods which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death."

A, in his lifetime,
sells or gives away the ring;
converts the chain into a cup:
converts the wool into cloth:
makes the cloth into a garment:
takes another house into which he removes all his goods

Each of these legacies is adeemed.

(*b.*) A bequeaths to B—
"the sum of 1,000 rupees in a certain chest:"
"all the horses in his stable."

At the death of A, no money is found in the chest, and no horses in the stable.

The legacies are adeemed.

(*c.*) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned.

The legacy is adeemed.

140. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall in such case be paid out of the general assets of the testator.

Non-ademption of demonstrative legacy.

141. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Ademption of specific bequest of right to receive something from third party.

Illustrations.

(*a.*) A bequeaths to B—
"the debt which C owes him:"
"2,000 rupees which he has in the hands of D:"
"the money due to him on the bond of E:"
"his mortgage on the Rámpur factory."

All these debts are extinguished in A's lifetime, some with and some without his consent.

All the legacies are adeemed.

(*b.*) A bequeaths to B—
"his interest in certain policies of life-assurance."

A in his lifetime receives the amount of the policies. The legacy is adeemed.

142. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum received.

Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.

Illustration.

A bequeaths to B "the debt due to him by C." The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

143. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the ex-

Ademption *pro tanto* by testator's receipt of portion of entire fund of which portion has been specifically

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tent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Illustration.

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and testator having received portion of that fund, remainder insufficient to pay both legacies.

144. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee, if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

Ademption where stock, specifically bequeathed, does not exist at testator's death.

145. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

Illustration.

A bequeaths to B—

"his capital stock of 1,000*l.* in East India Stock:"

"his promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan."

A sells the stock and the notes.

The legacies are adeemed.

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

146. Where stock which has been specifically bequeathed does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration.

A bequeaths to B—

"his 10,000 rupees in the 5½ per cent. loan of the Government of India."

A sells one-half of his 10,000 rupees in the loan in question.

One-half of the legacy is adeemed.

Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.

147. A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud or without the knowledge or sanction of the testator.

Illustrations.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A dies before they are brought back.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

When removal of thing bequeathed does not constitute ademption.

148. The removal of the thing bequeathed from the place in which it is stated in the will to be situated does not constitute an ademption where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations.

A bequeaths to B all the bills, bonds and other securities for money belonging to him then lying in his lodgings in Calcutta. At the time of his death these effects had been removed from his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the river Hugli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

When thing bequeathed is a valuable to be received by testator from third person, and testator himself, or his representative, receives it.

149. Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption;

but if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C and sets it apart from the general mass of his property. The legacy is not adeemed.

Change by operation of law of subject of specific bequest between date of will and testator's death.

150. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent. loan of the Government of India."

The securities for the 5½ per cent. loan are converted during A's lifetime into 5 per cent. stock.

A's bequeaths to B the sum of 2,000*l.*, invested in consols in the names of trustees for A.

The sum of 2,000*l.* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India which he has power under his marriage-settlement to dispose of by will. Afterwards in A's lifetime, the fund is converted into consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

Change of subject without testator's knowledge.

151. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration.

A bequeaths to B "all his 3 per cent. consols." The consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India stock. This legacy is not adeemed.

Stock specifically bequeathed, lent to third party on condition that it be replaced.

152. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

Stock specifically bequeathed, sold but replaced and belonging to testator at his death.

153. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

PART XXII.

Of the Payment of Liabilities in respect of the subject of a Bequest.

Non-liability of executor to exonerate stock bequeathed to legatee.

154. Where property specifically bequeathed is subject at the death of the testator to any pledge, lien or incumbrance, created by the testator himself or by any person under whom he claims then, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

Illustrations.

(*a.*) A bequeaths to B the diamond-ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(*b.*) A bequeaths to B a zamíndári which at A's death is subject to a mortgage for 10,000 rupees, and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed to be at cost of his estate.

155. Where anything is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations.

(*a.*) A having contracted in general terms for the purchase of land at a certain price, bequeaths it to B, and dies [illegible] the purchase-money. The purchase [illegible] out of A's assets.

(*b.*) A having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically.

156. Where there is a bequest of any interest in immoveable property, in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Illustration.

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

Exoneration of specific legatee's stock in joint stock company.

157. In the absence of any direction in the will where there is a specific bequest of stock in a joint stock company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate;

but if any call or other payment shall, after the testator's death become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest.

Illustrations.

(*a.*) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(*b.*) A has agreed to take 50 shares in an intended joint stock company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(*c.*) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(*d.*) A bequeaths to B his shares in a joint stock company. B accepts the bequest. Afterwards the affairs of the company are wound up and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(*e.*) A is the owner of ten shares in a railway company. At a meeting held during his lifetime a call is made of 3*l.* per share payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

PART XXIII.

Of Bequests of Things described in general terms.

Bequest of thing described in general terms.

158. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Illustrations.

(*a.*) A bequeaths to B a pair of carriage-horses, or a diamond [illegible] provide the legatee with such

The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

(*b.*) A bequeaths to B "*his* pair of carriage-horses." A had no carriage-horses at the time of his death. The legacy fails.

PART XXIV.

Of Bequests of the Interest or Produce of a Fund.

159. Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Bequest of interest or produce of fund.

Illustrations.

(*a.*) A bequeaths to B the interest of his five per cent. promissory notes of the Government of India. There is no other clause in the will affecting those securities. B is entitled to A's five per cent. promissory notes of the Government of India.

(*b.*) A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life and C is entitled to the notes upon B's death.

(*c.*) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

PART XXV.

Of Bequests of Annuities.

160. Where an annuity is created by will, the legatee is entitled to receive it for his life only unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Annuity created by will payable for life only, unless contrary intention appears by will.

Illustrations.

(*a.*) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(*b.*) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(*c.*) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

161. Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him or to receive the money appropriated for that purpose by the will.

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally or where money bequeathed to be invested in purchase of annuity.

Illustrations.

(*a.*) A by his will directs that his executors shall out of his property purchase an annuity of 1,000 rupees for B. B is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(*b.*) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B and C survive the testators. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

162. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

Abatement of annuity.

163. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

Where gift of annuity and residuary gift, whole annuity to be first satisfied.

PART XXVI.

Of Legacies to Creditors and Portioners.

164. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

Creditor *primâ facie* entitled to legacy as well as debt.

165. Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

Child *primâ facie* entitled to legacy as well as portion.

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

166. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

No ademption by subsequent provision for legatee.

Illustrations.

(*a.*) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(*b.*) A bequeaths 40,000 rupees to B, his orphan-niece, whom he had brought up from her infancy. Afterwards on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVII.

Of Election.

167. Where a man, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the will.

Circumstances in which election takes place.

168. The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

Devolution of interest relinquished by owner.

The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Testator's belief as to his ownership immaterial.

Illustrations.

(*a.*) The farm of Sultánpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultánpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(*b.*) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(*c.*) A bequeaths to B 1,000 rupees, and to C an estate which will, under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(*d.*) A, a person of the age of 18 domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and, subject thereto, devises and bequeaths to B "all his property, whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Bequest for man's benefit how regarded for purpose of election.

Illustration.

The farm of Sultánpur Khurd being the property of B, A bequeathed it to C, and bequeathed another farm called Sultánpur Buzurg to his own executors, with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultánpur Khurd in opposition to it.

171. A person taking no benefit directly under the will, but deriving a benefit under it indirectly, is not put to his election.

Person deriving benefit indirectly not put to election.

Illustration.

The lands of Sultánpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultánpur to B, and 1,000 rupees to C. C dies intestate, shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultánpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultánpur in opposition to the will.

172. A person who in his individual capacity takes a benefit under the will may in another character elect to take in opposition to the will.

Person taking in individual capacity under will may in other character elect to take in opposition.

Illustration.

The estate of Sultánpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultánpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultánpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

Exception to the six last Rules.—Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the will, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Illustration.

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultánpur during her life.

A by his will bequeaths to his wife an annuity of 200*l.* during her life, in lieu of her interest in the estate of Sultánpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l.* The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l.*

173. Acceptance of a benefit given by the will constitutes an election by the legatee to take under the will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

When acceptance of benefit given by will constitutes election to take under will.

Illustrations.

(*a.*) A is owner of an estate called Sultánpur Khurd, and has a life-interest in another estate called Sultánpur Buzurg, to which, upon his death, his son B will be absolutely entitled. The will of A gives the estate of Sultánpur Khurd to B, and the estate of Sultánpur Buzurg to C. B, in ignorance of his own right to the estate of Sultánpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultánpur Khurd. B has not confirmed the bequest of Sultánpur Buzurg to C.

(*b.*) B, the eldest son of A, is the possessor of an estate called Sultánpur. A bequeaths Sultánpur to C, and to B the residue of A's property. B, having been informed by A's executors that the residue will amount to 5,000 rupees allows C to take possession of Sultánpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultánpur to C.

174. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

Presumption arising from enjoyment by legatee for two years.

175. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Confirmation of bequest by act of legatee.

Illustration.

A bequeaths to B an estate to which C is entitled and to C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election;

When testator's representatives may call upon legatee to elect.

and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

Effect of non-compliance.

177. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

Postponement of election in case of disability.

STATEMENT OF OBJECTS AND REASONS.

THE Khojás are members of a sect which was originally Hindu but was converted to Muhammadanism about 400 years ago. They still, however, as has been more than once held by the highest Court in the Bombay Presidency, retain their former law to such an extent in matters connected with property and succession that it is to be presumed to apply to them until the contrary is shown. This state of things has at times given rise to great difficulties in litigation between Khojás.

2. In the case of *Hirbai* v. *Gorbai*, 12 Bom. High Court Rep. 294, which appears to have occupied the Lower Court for twenty-four sitting days and the Appellate Court for four days, Sir Michael Westropp, C. J., after describing the state of the law, observed as follows :—

"It is, however, evident that the Khojás are not as firmly bound in matters of succession and inheritance by the Hindu law as Muhammadans proper are by the Muhammadan law and the Hindus by the Hindu law, and hence it is that it would not be reasonable to require such stringent proof of a custom of inheritance amongst them differing from ordinary Hindu law as from a Hindu.

"Now, it is manifest that such a state of the law must greatly encourage litigation, and we cannot help thinking that it would be most desirable that the Government should take steps, as was done in the case of the Pársís, to ascertain the views of the majority of the community on the subject of succession, and should then pass an enactment giving effect to those views. Unanimity, of course, could not be expected, but the rules which were found generally to prevail might be made law; and though the religious differences existing among members of the Khojá caste might create some difficulty, it would not, we think, be insuperable."

3. The Government of Bombay, acting upon this suggestion, appointed about the end of the year 1878 a Commission consisting of four gentlemen taken from the Shia division of the Khojás, which acknowledged His Highness the late Aghá Khán as its spiritual superior, one taken from the Sunni division, and Mr. Spencer, Acting First Judge of the Court of Small Causes, with the Hon'ble Mr. Justice Melvill, of the Bombay High Court, as president.

The Commission took the greatest pains to inform themselves of the customs and views of both divisions of the Khojá sect in the Presidency of Bombay and elsewhere, and after much consideration and discussion agreed upon a draft Bill, subject to a dissent on a few specific points which was signed by His Highness Aghá Alí Sháh, son of His Highness the late Aghá Khán, and Mr. Dhurrumsey Poonjabhoy but not by Mr Jairajbhoy Peerboy and Mr. Rahimtula Syanee, the two other Shia members of the Commission. That draft, having been submitted to the Government of Bombay by the president on the 23rd of December, 1879, and approved of by that Government, was forwarded to the Government of India, and forms the basis of the present Bill.

4. It will be convenient to refer to the provisions of the present Bill as nearly as possible in their order, noticing in their proper place the few points in regard to which His Highness Aghá Alí Sháh and Mr. Dhurrumsey Poonjabhoy differed from the majority of the Commission, and the points of substantive importance in which the present Bill deviates from the draft framed by the Commission.

5. The first provision calling for notice is section 2, which defines the application of the Act—a matter which was not clearly provided for in the Bill prepared by the Commission. The main enactment of the section is that succession to the property, whether moveable or immoveable, in British India of a Khojá dying on or after the first day of January, 1885, shall be regulated by the rules contained in the Act wherever he may have had his domicile at the time of his death. So far as regards immoveable property, this provision coincides with section 5 of the Indian Succession Act, but, as regards moveable property, it involves an important deviation from that section, inasmuch as it applies the Act to all successions to such property though the deceased person may have been domiciled outside British India at the time of his death.

As the rule, which makes the law of the domicile of a deceased person regulate the succession to his moveable property, is not merely the rule of the Indian Succession Act but has obtained very general acceptance elsewhere, it seems desirable to state the reasons which have led the Government of India to think that it is not suitable to the Khojá community.

6. The choice as regards succession to moveable property appears to lie between the law of the domicile of the deceased and the law of the *situs* of the assets. The objections urged against the latter in Western countries are chiefly that a man's moveables are apt to be scattered over many jurisdictions each having a readily ascertainable law of its own, and that accordingly, if the law of the *situs* is made applicable to them, his estate will be broken up into many fragments, all governed by different laws; that a man's moveables may change their place; that the most important class of them, goods employed in commerce, are constantly changing their place; and that accordingly, if the law of the *situs* is applied, it will be impossible for him to foresee the particular law under which they will fall upon his death; and lastly, that the rule of the law of the *situs* does not clearly provide for that portion of the assets which consists of debts or other obligations existing in favour of the deceased. To avoid these difficulties it has been

generally agreed to adopt the law of the domicile of the deceased for the whole of his moveable estate. Various attempts have been made to rest this rule on some *á priori* principle; but it would seem to have had its actual origin in mere considerations of convenience.

7. Looking to the arguments by which it is supported, and to the peculiar circumstances of the Khojá community, it is questionable, to say the least, whether such a rule would meet the requirements of their case. The places beyond the limits of British India, as, for example, Kutch, the Persian Gulf and Zanzibar, in which any considerable number of Khojás is to be found have no law such as can properly be called a territorial law of succession. The tribunals in such places, in so far as they make any rational attempt to apply a law at all, would apply the personal law of the parties, and that in the case of Khojás is *ex hypothesi* altogether unsettled and unascertainable. There is thus in the case of Khojás domiciled out of British India practically speaking no law of the *situs* of the foreign assets to conflict with the law which would apply to the British Indian assets, and no law of the domicile to which recourse could be had; and, therefore, to give the law of the domicile a preference over the Indian law would be simply to substitute a congeries of indefinite and half-established customs for a law, to the application of which there could be no reasonable objection.

It may be added that, in the absence of a law of the domicile, the case is very analogous to those cases in which it is impossible to fix the domicile of the deceased, and the solution which Lord Alvanley appears to have suggested in a case of this latter class was to fall back, as is proposed in this case, on the law of the *situs* of the property; in other words, to put moveables on the same footing as immoveables.

8. If this solution is adopted, and the Indian law is applied to all moveables left by a deceased Khojá in British India, without regard to his domicile, and if, moreover, the same rule is applied, as it naturally would be, in cases arising in Consular jurisdictions in the Persian Gulf, Zanzibar and elsewhere, this further advantage will probably in time be gained, that the law in British India will come to be adopted as a personal law applicable to Khojás in all foreign States in this part of the world.

9. The above remarks apply equally to intestate and to testamentary succession. A question might indeed be raised as to whether a testamentary disposition made beyond the limits of British India should as regards its form be made absolutely subject to British Indian law; but, seeing that the effect of taking any other course would certainly be to admit oral dispositions, it seems clear that the risk of failures of justice will be on the whole less by subjecting completely to our law all dispositions, wherever made, of moveable property in British India.

10. In connection with the definitions it is convenient to notice one of the few important questions on which any difference of opinion has arisen, namely, the question as to the status to be assigned to a woman who is not a Khojá but who is legally married to a Khojá according to the rules of the Muhammadan law, and to her children by him.

The Khojás of the Sunni Jamát, though apparently unwilling to go so far as to recognize any other than a Khojá widow as entitled to inherit from her husband, proposed that the sons of a Khojá by a wife who is not a Khojá should have some share in the inheritance. To this the Khojás of the Shia Jamát would not agree, and the Commission ultimately adopted as a compromise the plan of assigning to the offspring of the marriages in question a status nominally intermediate between those of legitimacy and illegitimacy and giving them in the definition-clause the designation of "alien sons", but allowing them nothing more than illegitimate sons in the later sections of their Bill. It is stated that the Khojás as a rule are very exclusive and rarely take wives from outside their own community, and so long as this state of things continues the mode in which this point is dealt with is not of great practical moment; but there is an important principle involved, against which even the compromise adopted by the Commission appears to the Government of India to offend. The exclusion of the non-Khojá wife from inheritance and the degradation of her sons to a position altogether lower than that of the legitimate son involves a view as to restrictions on marriage which, even though it may have obtained acceptance with a majority of the Khojá sect, and though the Government has no desire to interfere with it, it is manifestly undesirable to have affirmed by the legislature. The present Bill will accordingly be found to contain no reference either in its definition-clauses or elsewhere to the so-called "alien son." It defines "son" to be a legitimate son and leaves "widow" undefined, and then proceeds to declare the rights of sons and widows, trusting to the Courts to decide, as they will on principles lying outside the law of succession, who are legally entitled to the status of sons and widows.

11. Chapter II of the Bill deals with "succession to the undivided property of a male Khojá dying intestate," and in the previous chapter "undivided property" has been defined as meaning "a share in property belonging to an undivided family." The Bill prepared by the Commission purported to define the phrase "undivided family," but the definition proposed has on inquiry been found to be unsafe. The undivided family among the Khojás appears to come into existence chiefly in connection with trade, and would seem to be an institution of a peculiar nature, somewhat resembling the undivided family among the Hindus; but, on the other hand, it is clear, from the rules laid down in certain sections of the Bill prepared by the Commission, and from the papers submitted with that Bill, that it differs in important respects from the Hindu undivided family. What exactly it is, and when property is to be regarded as its undivided property, it is difficult to ascertain from the papers before the

Government of India; but, judging from the analogous case in Hindu law, it would seem that these are matters which it would be almost hopeless to attempt to define in an Act of the legislature; nor does it appear to be necessary to define them in a Succession Act. It may well be assumed that a fundamental distinction which goes to the root of the family constitution, and which is not confined in its operation to matters of succession, but applies also *inter vivos*, is established outside this Bill. For these reasons, it has been thought best to make no attempt to define "undivided family" or "undivided property" in the present Bill.

12. It will be observed, on comparing Chapters II and III, that the only peculiarity connected with the intestate succession to undivided property is (section 6) that, in default of legitimate lineal male descendants of the intestate within the fourth degree, the property is equally divided among all the male members of the undivided family living at his death.

13. Chapter III of the Bill treats of "succession to the separate property of a male Khojá dying intestate," and the order of succession marked out in sections 7 to 20 will be found to be based on that of the Hindu law.

The subjoined statement has been prepared by the Hon'ble Mr. Melvill, the President of the Commission, with a view to showing at a glance the extent to which the two differ—

Order of succession according to Hindu law.	*Order of succession for Khojás proposed by the Bill.*
1. Sons.	1. Sons.
2. Grandsons.	2. Grandsons.
3. Great-grandsons.	3. Great-grandsons.
4. Widow.	4. Great-great-grandsons.
5. Daughters.	5. Father.
6. Daughters' sons.	6. Mother.
7. Mother.	7. Widow.
8. Father.	8. Daughters.
9. Brothers.	9. Daughters' sons. }
10. Half-brothers.	10. Brothers. }
11. Brothers' sons.	11. Sons' daughters.
12. Half-brothers' sons.	12. Brothers' sons.
13. Grandmother.	13. Half-brothers.
14. Sister (under the Mayukha).	14. Half-brothers' sons.
15. Grandfather.	15. Grandfather.
16. More distant relatives.	16. Grandmother.
	17. Paternal uncle.
	18. Sister.
	19. More distant relatives.

"It will be seen," Mr. Melvill observes, "that the only very noticeable point of difference is that among the Khojás the father and mother are elevated to a rank in the order of succession superior to that of the widow. This precedence of the mother has been judicially settled in the case of *Hirbai* v. *Gorbai**, already referred to; and although the Khojá members of the Commission were not unanimously in favour of the view taken in that case, they all agreed that, having once been judicially determined, the rule should not be disturbed."

* Reported 12 Bom. H. C. Rep., 294.

14. Section 20 of the present Bill differs in one important particular from the corresponding section (29) of the Bill prepared by the Commission.

The latter admitted to the succession only those of the "more distant relatives" of the intestate who were on the father's side, and confined it to such of them as are within the seventh degree of kindred. On failure of this limited class of distant kindred, section 42 gave the property "to the Jamát of that sect of the Khojás to which the intestate belonged at the time of his death, to be held and applied according to the customs of the said Jamát." Even this did not satisfy the two dissenting members of the Commission and some of the other adherents of His Highness the late Aghá Khán, who, as Imám, was the person chiefly interested in the succession of the Jamát. They contended that the Jamát should come in immediately after the nearer relations.

The Government of India, after fully considering this point in communication with the local authorities, have come to the conclusion that it is impossible to exclude the heirs of a deceased person in favour of any such institution as a "Jamát," or any person or authority representing such an institution. It is open to any Khojá who desires that his property should be devoted to any charitable or religious purpose, or should be enjoyed by any spiritual person for whom he entertains a special veneration, to dispose of his property by will or otherwise in accordance with law, but, if he dies intestate, it would be contrary to all established principles to enact that his property should devolve otherwise than upon his relatives.

15. Apart from this fundamental objection in point of principle, there appear to be practical objections to the proposal as formulated by the Commission. The Jamát is said to be an assembly in council of all the adult male members of the Khojá community of the place, and it is not unlikely that doubts would arise, in connection with matters of religious belief, residence, attendance at the Jamát, and so forth, as to the particular Jamát (if any) to which the deceased person belonged. Similar doubts might also arise as to who were the other persons actually belonging to the Jamát to which the deceased belonged, so as to take the property. There might further be doubts as to how the property of a deceased intestate Khojá is to be held,

and the objects to which it is to be applied. It is true that the section proposed by the Commission says that the property is to be held and applied "according to the customs of the said Jamát." But from a judgment of Sir J. Arnould in the case marginally noted, it would appear that there are no customs to look to. Though a Jamát collects large sums of money through its officers, it only does so on behalf of the Imám; the money collected is passed on to him; and if the Jamát wants any portion of it, even for the expenses of its Jamát-kháná (the council-hall or guildhall of the community), it can procure it only as a grant from the Imám. It appears to be absolutely in the discretion of the Imám to spend the money as he pleases, and as a matter of fact he spends a large portion of it, or at least is said by Sir J. Arnould to have done so at the time the judgment was delivered, on his own private purposes. Indeed, in a set of draft rules of succession for Shia Khojás submitted by His Highness Ágha Alí Sháh the succession of the Jamát is treated as the same thing with the succession of the Imám. The Jamát, therefore, does not seem to have any property or control over property, and it is not clear how there can be any custom governing the application of property by it. It has been argued that no such difficulties as those suggested ordinarily arise at present, but it would be clearly impossible to put the succession of the Jamát on a legislative basis without defining its conditions and incidents, and it would be equally impossible to place the property at the absolute disposal of any individual in whatever degree of veneration he might be held.

Dayá Muhammad and others versus *H. H. Ágha Khán and others* (page 323 of the Bombay High Court Reports, Vol. XII).

16. For these reasons section 20 of the present Bill extends the succession to relatives of the intestate both on the father's and on the mother's side without limit of degree, and it may be added that section 48 applies the ordinary rule, which makes the Crown the ultimate heir, in the rare case in which an owner of property may die intestate and leave no person entitled to succeed under the previous sections.

17. Section 21 is one of the leading sections of the Bill. It provides in effect that, when a female inherits under any of the foregoing sections, she shall; if certain near male relatives are living and are thus postponed to her, take the property only as "restricted owner"—a position to be presently explained at length. With this section should be read section 49, from which it will be seen that in other cases she takes the same interest in the property and has the same powers in respect of it as if she were a male.

18. Chapter IV treats of succession to the absolute property of a female Khojá dying intestate, that is to say, the succession to such of her property as belongs to her otherwise than as restricted owner. The provisions of this chapter call for no remark. Mr. Melvill states that they differ from the Hindu law but that they are approved by all classes of the Khojás, and are not, he thinks, open to any objection. The particulars in which they deviate from the Hindu law or the reasons for the deviations are not explained. They have been accepted by the Government of India as settled by the Commission, such details only being filled in after consultation with the local authorities as seemed necessary to give effect to what is understood to be the intention of those who framed them.

19. Chapter V, which treats of "property which a female takes as restricted owner and the further succession to the same," calls for more detailed notice.

It applies not only in the ordinary case of property taken by a female as restricted owner under Chapter III (*supra*, paragraph 17), but also in cases where she may take a similar interest in property under section 23 (2), section 24 (1), section 27 and section 39.

Its provisions are merely a development, with the requisite amplifications and with the addition of the necessary machinery, of the corresponding provisions of the Bill framed by the Commission. It has been settled in consultation with the local authorities and with a view to giving effect to what are understood to be the views of the Commission; but, having regard to the novelty and complication of the subject, it is not unlikely that when subjected to criticism it will be found susceptible of improvement in many particulars.

The limited estate taken by a Khojá female under this Bill resembles the estate taken by a Hindu widow, but there are many important differences between them. Mr. Melvill observes that the Khojá female estate is the more restricted of the two, but on this point he says the Khojás hold very strong views which he is of opinion must be respected.

20. In proceeding to notice the details of the chapter, the first point calling for attention is the phrase "restricted owner." It has been chosen merely on the ground that it is new and connotes nothing, and it is not unlikely that some more appropriate phrase may be suggested. The phrase "life-estate" and its correlative "reversion," used in the Bombay Bill, are not only open to the objection that ordinarily lies against all terms imported from another legal system, but further, as has been constantly observed of them in the case of the Hindu widow's estate, they suggest an altogether false analogy. The position, if it is necessary to illustrate it by reference to English law, is rather like that of a fee-simple estate subject to an executory devise.

21. As regards the attempt made in the Bill to define the estate, it will be observed that section 28 enacts that the female shall be absolutely entitled to the use of, and the income accruing from, the property during her life, and, except as otherwise provided by the Act, shall have all the other rights and powers of an absolute owner.

An objection has been taken to this on the ground that money saved by a widow from the income of the property should not belong to her absolutely but should go to her husband's heirs.

This contention is not based on any alleged actual practice, but is put forward merely as a "necessary consequence of the invariable custom" which limits the widow's interest in the *corpus* of her husband's property to the time during which she remains unmarried.

Now, not only is it not a necessary consequence of the custom in question, but it is, as admitted by the objectors themselves, in a certain sense illogical; for why should a person who has absolute power to dispose of the income as it comes in, in whatever way she pleases, be restricted from dealing with her savings from it?

Again, the only effect of adopting the proposed suggestion would, as the objectors themselves admit, generally be that the widow would squander the income as it came in; and, in the rare cases in which she allowed some of it to accumulate, the probability is that litigation would result from the difficulty of identifying the fund and separating it from the rest of her property. For these reasons the section has been allowed to stand.

22. Section 30 defines the obligations of the restricted owner as regards—

(*a*) the preservation of the substance of the property for those who are to come after her; and

(*b*) the protection of the title.

As regards "waste," it stands on a footing altogether peculiar in the case of the Hindu widow; and clause (*a*) of this section has been drawn with a view to placing it on a somewhat similar footing in the case of the restricted owner.

23. As regards the powers of alienation, in the limitations on which the restricted nature of the estate chiefly consists, the only powers of alienation for any time beyond the life of the restricted owner allowed to her by the Bill, besides a limited power of leasing conferred by section 29, are those specified in section 31, which runs as follows:—

"31. A female taking property as restricted owner shall have power to transfer the same, so that the transfer may have effect beyond her life, when, the income being insufficient, such transfer is necessary in order to raise money for any of the following purposes, namely:—

Restricted owner's power of transfer.

"(*a*) to discharge any of the obligations imposed by section 30;*

"(*b*) to discharge the debts of the absolute owner from whom the property descended;

"(*c*) to provide for the maintenance of any persons entitled under this Act to have their maintenance provided for out of the property, for the payment of any marriage expenses or funeral expenses payable under this Act out of the property, and for the performance of any ordinary family ceremonies; and

"(*d*) to support herself where she has no other sufficient means of support."

* *Viz.*, obligations to preserve the substance of the property and protect the title.

24. It has been urged by the two dissenting members of the Commission and by some other adherents of His Highness the Imám that a mother taking a restricted estate should have larger powers of alienation and that she or a widow taking a like estate should be empowered to alienate for religious objects; that is, as explained in the set of draft rules submitted by His Highness Ágha Alí Sháh, to give the property to the Imám; but, upon considering the arguments adduced and consulting the local authorities, the Government of India have determined to uphold the decision of the majority of the Commission, which is against the concession of any such powers.

25. In order to avoid as far as possible the great difficulties which arise in the case of a Hindu widow exceeding her power of alienation, an alienation in excess of the power has (section 29 of the Bill) been made absolutely void for any period beyond the restricted owner's life, except where the purchaser takes for consideration and without notice of the ownership being restricted. This, no doubt, standing alone, would place too great difficulties in the way of alienation; but sufficient relief will probably be afforded by the power to apply to a Court for sanction, which is given by section 32. It may be objected that it is undesirable to force people to resort to a Court in such matters; but the case is one of a choice of evils, and it is probably better that they should resort to the Court in every case where there is any room for doubt than run the risk of being involved in troublesome and expensive litigation later on.

A Court dealing with a application under section 32 is empowered (section 33) to accord its sanction to the transfer subject to the condition that the money thereby raised shall be paid into Court or to trustees appointed by the Court, and to give such further directions as it may think fit with a view to ensuring that the money shall be applied to the purpose for which it is raised, or that any balance that is not so applied shall be secured for the benefit of those entitled after the restricted owner.

26. It will be observed that no provision is made in the draft for alienation with the consent of the so-called "reversioners." This matter is one which gives rise to great difficulties in the case of the Hindu widow, and it seems impossible, having regard to the system of succession established by the Bill, to provide for it in any satisfactory manner. If provision had only to be made to meet the case of "reversioners" who claim under section 37 (1) and section 38 (3) by descent from the last absolute owner, the matter would be much simpler than in the case of the Hindu widow, inasmuch as these "reversioners" would always be known living persons or persons who would claim through them; but there are, besides these, the "reversioners" mentioned in section 38 (1) and (2), and it is thus impossible to fix upon any person whose consent would be sufficient.

27. Further, even if we were, as has been suggested, to waive this objection, and accept the consent of a merely presumptive "reversioner," there is another difficulty, namely, that the presumptive "reversioner" might (see section 39 of the Bill) be another restricted owner, possibly an old woman on the verge of the grave, whose prospect of succeeding would be extremely small. There might be several such persons intervening between the restricted owner and the first person who would take as absolute owner. We could hardly rest satisfied with anything short of the consent of this last person and all the intervening ones, and thus we should be landed in a considerable complication, leading in many cases to no very satisfactory result, inasmuch as the interest of the first person who would take as absolute owner, and to whose consent we would chiefly look, would often be of a remotely contingent nature. It is, of course, on economical grounds desirable to provide a means of freeing the property from the limited ownership, but the advantage would be dearly purchased if the basis of the purchaser's title were to be complicated in this way.

28. As regards the sale of property in execution of a decree against a restricted owner, it will be seen that the effect of section 34 of the Bill is that a person lending money for any of the purposes mentioned in section 31 can sell in execution nothing more than the so-called "life-interest" of the restricted owner, unless his loan is secured by a mortgage. The position of the restricted owner as regards anything beyond her so-called life-interest is, in fact, in this particular, somewhat similar to that of an English executor with power to charge the real estate. If it were otherwise, there might arise, in cases of execution for unsecured debts, the same difficult questions which the preceding sections are intended to shut out in cases of voluntary alienation.

29. It will be observed that, by sections 37 (2) and 38 (4) of the Bill the Crown is postponed to the general heirs of the restricted owner. This appears to be right, though it is gathered from the case of *The Collector of Masulipatam* v. *Cavaly Vencata Narrainapah* (8 Moo. I. A. 529),—this precise point was not there decided,—that it is otherwise in the case of a Hindu woman's estate.

30. Sections 35 and 36 in effect provide that the restricted owner shall represent the property in judicial proceedings and compromises of disputes and for the purposes of laws of limitation and prescription, so as to bind those who take after her.

31. Sections 37 to 39, which regulate the devolution of property after the death of the restricted owner, have been drawn with a view to carry out what is understood to be the intentions of the Commission.

Their main provisions are that—

(*a*) when the restricted owner dies unmarried, the property shall belong to the person to whom it would then have belonged if she had died before the absolute owner from whom it descended and it had descended under the Act without having been alienated, and in default of such person it shall descend as if the female were not a restricted owner; and

(*b*) when the restricted owner has been married, the property shall on her death go to certain of her descendants, and if there are no such descendants shall devolve as just stated.

32. From section 39 it will be seen, as already observed, that property may devolve upon two or more restricted owners in succession. This is to be regretted, but it seems to be an essential part of the scheme.

33. Section 40 regulates the legal relations arising where two or more widows of a deceased Khojá take his property together as restricted owners, and provides that there shall be a right of survivorship between them.

34. Section 41 provides that a widow marrying again after her husband's death shall not be entitled to take as restricted owner his property or any property of any of his lineal descendants which has descended to them from him, and that, if a widow taking any such property as restricted owner subsequently marries again, she shall be deemed for the purposes of certain sections of the chapter to have died. One effect of this latter provision is that the restricted ownership of the widow ceases on her re-marriage.

35. Coming now to Chapter VI, relating to the wills of Khojás, it will be observed that all matters connected with probate and letters of administration are in the case of Khojás, as in the

case of other persons not subject to the Indian Succession Act, left to be dealt with under the Probate and Administration Act, 1881. The result of this is that the matters remaining to be provided for under this chapter are in the main the same as those which are provided for by the Hindu Wills Act, 1870, as amended by the Act just mentioned; and, as a matter of fact, the specification of the sections of the Indian Succession Act made applicable to the wills of Khojás by this chapter is based on the specification contained in the Hindu Wills Act as cut down by the Probate and Administration Act, 1881. There are, however, some important differences between the two which call for explanation here.

36. The most important of these differences is connected with the limitation on the powers of testamentary disposition. The specification of the sections of the Indian Succession Act applicable to Hindus, &c., contained in the Hindu Wills Act comprises several sections which either confer, or assume the existence of, a power of disposition in favour of unborn persons, but the Act contains a proviso to the effect that nothing therein contained shall authorize any Hindu, &c., to create in property any interest which he could not previously have created, and the Calcutta High Court have held in the recent case of *Alangamonjori Dabee* v. *Sounamoni Dabee* (I. L. R. 8 Cal. 637) that the effect of that proviso is to cut down the power of disposition, which the sections in question confer or assume to exist, to the limits imposed on a testator by the Hindu law, that is to say, as held in the well-known *Tagore* case, to a mere power of disposition in favour of persons who are either in fact or in contemplation of law in existence at the death of the testator.

37. It will be seen, on reference to the report of *Alangamonjori Dabee's* case, that, though there was no difference of opinion in the Appellate Court which finally heard it, much difficulty arose from the form in which the Hindu Wills Act had been drafted, and that the learned Judge in the Court below had been led by this to take the opposite view. This being so, it was obvious that the drafting of the Hindu Wills Act could not be followed in this particular. Moreover, it was seen that to adopt this form of drafting would in a considerable number of cases expose the testamentary dispositions of Khojás to be called in question for reasons drawn or supposed to be drawn from the extremely vague and unsettled customary law now prevailing among them, and thus the object of the present measure, which is intended to supply a definite body of law, would be to a great extent defeated. It was accordingly resolved to enact directly either that a Khojá's power of testamentary disposition should be co-extensive with that allowed by the Indian Succession Act, or should be limited somewhat in accordance with the ruling in the *Tagore* case.

38. It was clear that the question as to which of these courses should be adopted stood on grounds altogether independent of those on which the perpetuity question among Hindus had been discussed. The considerations with reference to which it should, in the opinion of the Government of India, be decided will be best seen from the remarks made on referring it to the local authorities for opinion. It was observed that the point was one in regard to which there was no recognized definite rule among the Khojás, and that if, having regard to the family system of that sect and its requirements in this particular, it was considered that it would be desirable to confer upon Khojás a power of disposition as large as that conferred by the Succession Act, the Governor General in Council would be prepared to confer that power; that the circumstance that, in the absence of any other rule, the Courts presume the Hindu law to be applicable to Khojás, and so might possibly, if the question then arose, hold a Khojá testator limited by the rule in the *Tagore* case, ought not, in the opinion of the Governor General in Council, to be permitted to stand in the way of such legislation. "The Government of India," it was said, "has ever been reluctant to alter, by legislation, personal laws like those of the Hindus and Muhammadans, which are definitely ascertainable and are established on a religious or *quasi*-religious basis; but a rule of Hindu law, which is applied not as such, but merely by virtue of the presumption above referred to, in the absence of any other ascertainable rule, to persons who are by religion not Hindus but Mussulmans, stands in its application to such persons on a totally different footing; and, if it appears expedient to set it aside as regards them, there need be no hesitation about doing so. The rule of the *Tagore* case, assuming that it would at this moment be applied by the Courts to Khojás, is as applied to them no more sacred or immutable than any of the other rules of Hindu law which at this moment may be applicable to Khojás, but which will be modified by the Bill if it becomes law. No difficulty will, therefore, be raised here on this score."

If, on the other hand, it was observed, it should appear that the rule prohibiting dispositions in favour of unborn persons had, as a matter of fact, been recognised and observed among the Khojás, or if, there being no recognized rule or established practice either way, it should be considered that the powers of disposition allowed by the Succession Act were larger than were needed for the requirements of Khojás, it would probably be desirable to limit the power of disposition in some such way as it is limited by the Hindu law as interpreted in the *Tagore* case. The system of intestate succession established by the Bill was in certain respects a complicated one; and if to this were to be added a power of making complicated dispositions by will, it was to be feared that we should bring about, in regard to the property of this wealthy and important sect, a state of things which it was desirable if possible to avoid.

39. The reply of the local authorities was to the effect that, as far as appeared, there was no recognized definite rule among the Khojás bearing on the point; that it was unlikely that

any attempt had hitherto been made among them to create by will an interest in favour of an unborn person; that there was thus a *tabula rasa*; and that it was quite open to the legislature to legislate on the subject as it thought best without any fear of violating an existing custom or of running counter to any prejudice or desire of the Khojá community.

This being so, the Government of India have come to the conclusion that it is undesirable to confer on Khojás any power of testamentary disposition in favour of persons not in existence at the time of the testator's death; and accordingly all portions of the Indian Succession Act which confer, or assume the existence of, such a power have, as far as practicable, been omitted, a proviso at the same time being inserted to the effect that a bequest by a Khojá in favour of any person who has not come into existence at the death of the testator shall be void.

40. The remaining differences between this Bill and the Hindu Wills Act as regards the provisions of the Indian Succession Act applied by them are of less importance.

It may, however, be stated that the following additional provisions of the Succession Act have been made applicable, namely:—

(*a*) section 47, giving a father power to appoint a guardian by will—a power the existence of which was assumed by the Commission;

(*b*) sections 52 and 53, relating to privileged wills;

(*c*) section 84, which provides that, when property is bequeathed to a person and words are added which describe a class of persons but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole of the interest of the testator therein unless a contrary intention appears by the will;

(*d*) section 104, which limits directions for accumulation.

It should be added that section 187 of the Indian Succession Act, which provides that no right as executor or legatee can be established until a grant of probate or letters of administration is obtained, has been omitted for reasons similar to those which led to its being ultimately omitted from the Probate and Administration Act, 1881; and that sections 134 and 135, determining whether property bequeathed to two or more persons in succession should when its value is liable to decrease be retained in its original form, have been omitted, as it seems safer in this country to lay down no hard-and-fast rules on the subject.

41. The only other point calling for notice in connection with this chapter is that section 43, following the proviso to section 10 of the Transfer of Property Act, confers a power of bequeathing property to or for the benefit of a woman, so that she shall not have power to transfer or charge the same or her beneficial interest therein. The existence of such a power appears to have been assumed in the Bill prepared by the Commission.

42. Chapter VII, relating to maintenance and marriage and funeral expenses, calls for little notice. There was some obscurity about the corresponding provisions of the Bill prepared by the Commission, and this chapter has now been settled in accordance with what is understood from the local authorities to have been the original intention. It is believed that the only change of a substantive nature made here is in section 46, where provision has been made for the maintenance, &c., of a daughter while she remains unmarried. The chapter, however, will probably be found open to further amendment when it has been more fully considered.

43. Section 47, which provides for the recovery of sums due under this chapter, has been drawn with a view to precluding, as far as possible, the difficulties which have arisen under the Hindu law in regard to claims for maintenance, and in particular as to how far a person having a right to maintenance is entitled to follow the property of the deceased. As regards this last point, it has been thought best to place the claim for maintenance, &c., on the footing of a debt, postponing it, however, to debts proper. This will not absolutely remove all difficulty, but, by bringing the case within an existing class, it will avoid the creation of a new difficulty.

The 1st July, 1884.

C. P. ILBERT.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, JULY 19, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 25th June, 1884:—

No. 7 OF 1884.

THE PANJÁB COURTS BILL, 1884.

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SCHEDULE.—ACTS REPEALED.

A Bill to amend the Law relating to Courts in the Panjáb.

WHEREAS it is expedient to amend the law relating to Courts in the Panjáb; and whereas the Secretary of State for India in Council has given his previous sanction to the passing of this Act; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. *(1)* This Act may be called the Panjáb Courts' Act, 1884. (Short title.)

(2) It extends to all the territories for the time being under the administration of the Lieutenant-Governor of the Panjáb; and (Local extent.)

(3) It shall come into force on the first day of October, 1884. (Commencement.)

2. On and from that day the Acts mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column thereof. (Repeal of Acts.)

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

(1) "Assistant Judge" includes a Deputy Commissioner invested with the powers of an Assistant Judge.

(2) "Assistant Commissioner" includes Extra Assistant Commissioner.

(3) "Revenue Court" means the Court of a Financial Commissioner, of a Commissioner, of a Deputy Commissioner, of an Assistant Commissioner or of a Tahsíldár exercising jurisdiction in suits of any of the classes mentioned in section 48.

(4) "Interlocutory order" means an order not having the force of a decree under the Civil Procedure Code or any other enactment, nor being a judgment, order to give security, order of acquittal or order under the Code of Criminal Procedure for the disposal of property or the proceeds thereof, passed or made by a Criminal Court. XIV of 1882. X of 1882.

The Panjáb Courts Bill, 1884.
(Chapter II.—Of the Constitution of the Courts.—Sections 4-16.)

CHAPTER II.

OF THE CONSTITUTION OF THE COURTS.

4. Besides the Courts established under any other law for the time being in force, there shall be the following grades of Courts (namely):— (Grades of Courts.)

(1) the Chief Court;
(2) the Divisional Court;
(3) the Court of the Assistant Judge;
(4) the Court of the Subordinate Judge of the first class;
(5) the Court of the Subordinate Judge of the second class;
(6) the Court of the Subordinate Judge of the third class;
(7) the Court of the Subordinate Judge of the fourth class.

[Act XVII of 1877, s. 5.]

5. The Chief Court shall consist of three or more Judges who shall be appointed by the Governor General in Council, and shall hold their offices during his pleasure, and of whom one at least shall always be a barrister of not less than five years' standing. (Constitution of Chief Court and appointment and tenure of Judges.)

[Act XVII of 1877, s. 6.]

6. The Judges of the Chief Court shall have rank and precedence according to the seniority of their appointments as such Judges: (Rank and precedence of Judges of Chief Court.)

Provided that a Judge permanently appointed shall be deemed senior to an officiating Judge.

7. *(1)* Each Divisional Court shall consist of two or more Judges who shall be appointed by the Local Government, and may be transferred, suspended or removed by the Local Government. (Constitution of Divisional Courts.)

(2) The Commissioner of a Division may be appointed Judge of a Divisional Court, in addition to his other duties.

8. *(1)* When the Commissioner of a Division is one of the Judges of a Divisional Court, he shall be deemed the Senior Judge of the Court. (Seniority of Judges of a Divisional Court.)

(2) The seniority of the other Judges shall be regulated by the seniority of their appointments as Judges of a Divisional Court:

Provided that a Judge permanently appointed shall be deemed senior to an officiating Judge.

9. *(1)* The Assistant Judges and the Subordinate Judges of the first class shall be appointed, and may be transferred, suspended or removed, by the Local Government. (Appointment of Assistant Judges and Subordinate Judges.)

(2) The Subordinate Judges of the second, third and fourth classes shall be appointed, and may be transferred, suspended or removed, by the Chief Court, subject to the control of the Local Government, and to rules which the Local Government is hereby empowered to make as to the qualifications of persons to be appointed to the office of Subordinate Judge.

(3) The present Munsifs shall be deemed to have been duly appointed, and shall be, Subordinate Judges under this Act, and their classification as Subordinate Judges of the second, third or fourth class shall be determined by the Chief Court.

[Act XVII of 1877, s. 7.]

10. Every person appointed under this Act to be or to act as Judge of a Divisional Court, Assistant Judge or Subordinate Judge shall, within the local limits of the jurisdiction of the Court to which he may, from time to time, be posted, have the powers of a Judge of a Divisional Court, of the Court of an Assistant Judge, or of the Court of a Subordinate Judge of the fourth class, as the case may be. (Certain powers to be exercised *ex officio*.)

[Act XVII of 1877, s. 8.]

11. *(1)* The Local Government may, from time to time, confer upon any Deputy Commissioner or Assistant Commissioner the powers of an Assistant Judge, or upon any Assistant Commissioner the powers of a Subordinate Judge of any class, or upon any Subordinate Judge not being an Assistant Commissioner the powers of a Subordinate Judge of the second or of the third class, or upon any Tahsíldár or Náib Tahsíldár the powers of a Subordinate Judge of the third or of the fourth class, and may withdraw any powers so conferred. (Deputy Commissioners, Assistant Commissioners, Subordinate Judges, Tahsíldárs and Náib Tahsíldárs may be invested with powers.)

(2) Any officer invested with powers under this section may exercise such powers in any district or sub-division of a district to which he may, from time to time, be posted.

[Act XVII of 1877, s. 9.]

12. The Local Government may, from time to time, confer upon any person all or any of the powers of a Court of any of the five grades last mentioned in section 4, and may withdraw any powers so conferred. (Any person may be invested with certain powers.)

[Act XVII of 1877, s. 10.]

13. *(1)* The Local Government may direct any three or more persons invested with powers of the same description under section 12 to sit together as a bench; and those powers shall, while such direction remains in force, be exercised by the bench so constituted, and not otherwise. (Exercise of such powers by benches.)

(2) The decision of the majority of the members of a bench constituted under this section shall be deemed to be the decision of the bench.

[Act XVII of 1877, s. 11.]

14. Except for the purpose of exercising control over any other Court, any person or any bench exercising the powers of a Court of any grade under section 12 or section 13 shall be deemed to be a Court of such grade for all the purposes of this Act. (Persons and benches exercising such powers to be deemed Courts of corresponding grades.)

[Act XVII of 1877, s. 12.]

15. Any person or bench invested under section 11, section 12 or section 13 with the powers of a Court of any grade shall exercise such powers and discharge the functions of such Court within such local limits and in such classes of cases as the Local Government may, from time to time, direct. (Such powers where and in what cases to be exercised.)

[Act XVII of 1877, s. 13.]

16. The Local Government may, from time to time, by notification in the official Gazette, fix the local limits of the jurisdiction of any Court of any of the five grades last mentioned in section 4. (Power to alter local limits of jurisdiction.)

The Panjáb Courts Bill, 1884.
(Chapter III.—Of the Jurisdiction and Powers of the Chief Court.—Sections 17-24.)

CHAPTER III.

OF THE JURISDICTION AND POWERS OF THE CHIEF COURT.

[Act XVII of 1877, s. 14.]

17. The Chief Court shall be deemed, for the purposes of all enactments for the time being in force, to be the highest Civil Court of appeal in the territories to which this Act extends.

Civil appeals from subordinate Courts.

[Act XVII of 1877, s. 15; *Cf.* Crim. Pro. Code, ss. 4 (*i*) and 266.]

18. The Chief Court shall be the highest Court of criminal appeal or revision in the said territories, and shall have power, as a Court of original jurisdiction, to try European British subjects committed to it for trial.

Criminal, appellate and revisional jurisdiction.

Power to try European British subjects.

[Act XVII of 1877, s. 16; Civil Pro. Code, s. 25.]

19. The Chief Court may, on the application of any of the parties, after giving notice to the parties and hearing such of them as desire to be heard, or of its own motion, without giving such notice, withdraw any suit or other civil proceeding instituted in any Court under its superintendence or control, and try or dispose of such suit or proceeding itself, or transfer the same for trial or disposal to any other Court under its superintendence or control and competent to try or dispose of such suit or proceeding in respect of its nature and the amount or value of its subject-matter.

Power to withdraw and try, or to transfer, suits.

[Act XVII of 1877, s. 17.]

20. Except as otherwise provided by any law for the time being in force, an appeal shall lie from any decree or order passed or made by the Chief Court—

Appeals from original jurisdiction of Chief Court.

(*a*) in exercise of the original jurisdiction conferred by section 19; or

(*b*) in exercise of any other original jurisdiction of a civil nature to which the Chief Court may by rule extend this section:

Provided that such appeal shall lie only in the cases and in manner following (that is to say):—

(*c*) when such decree or order is made by a single Judge, an appeal shall lie, either to a bench consisting of two other Judges, or to the full bench, as the Court may, by general rule or special order, from time to time, direct;

(*d*) when such decree or order is made by a bench of Judges not being the full bench, and such Judges differ in opinion, the appeal shall lie from such decree or order to the full bench.

[Act XVII of 1877, s. 19, extended to Divisional Courts.]

21. *(1)* Except as by this Act or by any other enactment for the time being in force otherwise provided, the Chief Court may make rules to provide in such manner as it thinks fit for the exercise by one or more of its Judges of any powers conferred on it, and for the exercise by one or more of the Judges of a Divisional Court of any of the powers conferred on that Court, by this Act, or by any other enactment for the time being in force:

Delegation of powers to its members.

Proviso.

Provided that no order not being an interlocutory order, and no decree, sentence or decision of any Court, shall be reversed by any Judge of the Chief Court or of a Divisional Court sitting alone.

(2) When the Chief Court consists of more than three Judges, it may make rules declaring what number of Judges, not being less than three, shall constitute a full bench of the Court, and may by these rules prescribe the mode of determining what Judges shall sit as a full bench, when a full bench sitting becomes necessary.

(3) The Chief Court may, from time to time, delegate to one of its Judges the power of determining, subject to any rules made under this section, what Judge in each case shall sit alone and what Judges of the Court shall constitute any bench of Judges.

[See 24 & 25 Vic., cap. 104, s. 14.]

[Act XVII of 1877, s. 20.]

22. When there is a difference of opinion among the Judges composing any bench of the Chief Court on any question arising before such Judges in the exercise by them of any powers conferred on such Court by this Act, or by any other enactment for the time being in force, such question shall, except as otherwise provided by any enactment for the time being in force, be decided as follows, that is to say:

Rule of decision when Judges differ.

If the number of such Judges concurring in one opinion upon such question is larger than the number holding any other opinion upon such question, the decision shall be in accordance with the opinion of such larger number.

If the numbers of such Judges holding two or more opinions on such question are equal, the following rules shall be observed, that is to say:—

(*a*) if such bench is the full bench, or is exercising any original jurisdiction to which section 20 applies or is extended, the decision upon such question shall be in accordance with such one of these opinions as is held by the Judge who has precedence under section 6;

(*b*) in other cases the bench before which such question has arisen shall refer the same to the full bench, and the full bench shall decide the same in accordance with the rules hereinbefore contained, and the case in which such question has arisen shall be disposed of by the bench referring such question in accordance with the decision of the full bench thereon.

[Act XVII of 1877, s. 21.]

23. *(1)* Any single Judge of the Chief Court or any bench of Judges of such Court (not being the full bench) exercising any powers conferred on the Chief Court by this Act or by any other enactment for the time being in force may refer for the decision of the full bench any question of law or custom having the force of law, or the construction of any document, or the admissibility of any evidence arising before such Judge or bench of Judges.

Power to refer question to full bench.

(2) Any Judge or bench making a reference on any question in any case under this section shall dispose of such case in accordance with the decision of the full bench on such question.

[Act XVII of 1877, s. 22.]

24. *(1)* The Chief Court may, from time to time, appoint a Registrar and Deputy Registrar and such other ministerial officers as may be necessary for the administration of justice by such Court, and for the exercise and performance of the powers and duties conferred and imposed on it by this Act.

Power to appoint ministerial officers.

(2) The appointment of the Registrar shall be subject to the sanction of the Local Government.

The Panjáb Courts Bill, 1884.
(Chapter IV.—Of the Jurisdiction and Powers of the Subordinate Courts.—Section 34.)

[Act XVII of 1877, s. 23.]

25. The officers so appointed shall exercise such powers and discharge such duties of a ministerial nature as the Chief Court may, from time to time, direct.

Powers and duties of such officers.

[Act XVII of 1877, s. 24.]

26. Any such officer may be suspended or dismissed from his office by order of the Chief Court:

Suspension and dismissal of such officers.

Provided that neither the Registrar nor the Deputy Registrar shall be dismissed without the previous sanction of the Local Government.

[Act XVII of 1877, s. 25.]

27. The general superintendence and control over all Courts of the six grades last mentioned in section 4, and over all Courts of Small Causes, shall be vested in, and such Courts shall be subordinate to, the Chief Court.

Superintendence and control of subordinate Courts.

[Act XVII of 1877, s. 26.]

28. *(1)* The Chief Court may, from time to time, make rules—

Power to make rules as to petition-writers.

(*a*) declaring what persons shall be permitted to practise as petition-writers in the Courts of the Panjáb;

(*b*) regulating the conduct of persons so practising.

(2) Whoever breaks any rule made under this section and having the force of law shall be liable, on conviction before a Magistrate, to a fine which may extend to fifty rupees.

[Act XVII of 1877, s. 27; see also Criminal Procedure Code, s. 553, and Civil Procedure Code, s. 652.]

29. The Chief Court may, from time to time,—

Power to make rules as to other matters.

(*a*) make rules consistent with this Act conferring and imposing on the ministerial officers of the Courts subject to its superintendence such powers and duties of a ministerial nature as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed;

(*b*) make rules consistent with this Act to determine in what cases pleaders practising in such Courts shall be permitted to address such Courts in English;

(*c*) prescribe forms for seals to be used by such Courts;

(*d*) prescribe forms for such books, entries, statistics and accounts as it thinks necessary to be kept, made or compiled in such Courts or submitted to any authority;

(*e*) make rules consistent with this Act providing for the inspection of such Courts and the supervision of the working thereof;

(*f*) make such rules consistent with this Act, institute such enquiries and submit such recommendations to the Local Government as it may think fit, with a view to promoting the efficiency of the judicial and ministerial officers of such Courts and maintaining proper discipline among such officers.

[Act XVII of 1877, s. 28.]

30. *(1)* The Chief Court shall keep such registers, books and accounts as may be necessary for the transaction of the business of the Court, and shall submit to the Local Government such of the same registers, books and accounts, and statements of the work done in the Court, as may, from time to time, be required by the said Government.

Registers, books, accounts and statements to be kept and furnished by Chief Court.

(2) The Chief Court shall also comply with such requisitions as may, from time to time, be made by the Governor General in Council, or by the Local Government, for certified copies of, or extracts from, the records of the Courts.

[Sec. 29, Act XVII of 1877, and ss. 638 and 639, Civ. Pro. Code.]

31. *(1)* The Chief Court, when sitting as a Court of civil judicature, shall take evidence and record judgments and orders in such manner as it, by rule, from time to time, directs, and may, from time to time, frame forms for any proceeding in that Court in the exercise of its civil jurisdiction.

Chief Court to take evidence and record judgments according to its own rules, and to frame forms for proceedings.

(2) The following provisions of the Civil Procedure Code shall not apply to the Chief Court in the exercise of its original civil jurisdiction, namely, sections 119, 182 to 185 (both inclusive), 187, 189 to 191 (both inclusive), 192 (so far as it relates to the manner of taking evidence), 198, 200 to 204 (both inclusive), and so much of section 409 as relates to the making of a memorandum; XIV of 1882.

And sections 571 to 575 (both inclusive), 554 (so far as it relates to the time of dating and signing judgment) and 579 shall not apply to the Chief Court in the exercise of its appellate jurisdiction.

[Act XVII of 1877, s. 29.]

32. *(1)* Any non-judicial or quasi-judicial act which the Civil Procedure Code requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code, may be done by the Registrar of the Court, or by such other officer of the Court as the Court may direct to do such act.

Non-judicial acts may be done by Registrar.

(2) The Chief Court may, from time to time, by rule, declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

[New, Civ. Pro. Code.]

33. When any appeal, reference or case heard in the exercise of revisional jurisdiction has been heard by a bench consisting of two or more Judges, a judgment or dissent written by any member of the bench, but not pronounced, may be delivered by any other member of that bench.

Delivery of judgment in the absence of Judge who recorded it.

CHAPTER IV.

OF THE JURISDICTION AND POWERS OF THE SUBORDINATE COURTS.

[Sec. 30, Act XVII of 1877.]

34. Subject to the general superintendence and control of the Chief Court—

Controlling powers of Divisional Court and of Assistant Judges.

every Divisional Court shall control (*a*) the Courts of all Assistant Judges or officers invested with the powers of an Assistant Judge within its division, and (*b*) the Courts controlled by the Assistant Judges or Deputy Commissioners invested with the powers of an Assistant Judge within its division;

and, subject to the control of the Divisional Court—

every Assistant Judge and every Deputy Commissioner invested with the powers of an Assist-

The Panjáb Courts Bill, 1884.
(Chapter IV.—Of the Jurisdiction and Powers of the Subordinate Courts.—Sections 35-41.)

ant Judge shall control (*a*) all Courts of the four grades last mentioned in section 4, and all Courts of Small Causes, and (*b*) all Courts of persons other than the Deputy Commissioner of a district invested under section 11 or section 12 with the powers of an Assistant Judge within the area subject to his jurisdiction.

Principal Court of original jurisdiction.

35. Except as otherwise provided by any enactment for the time being in force, the Divisional Court shall be deemed to be the District Court or principal civil Court of original jurisdiction in its division:

Provided that the Local Government may empower any Assistant Judge or any Deputy Commissioner invested with the powers of an Assistant Judge to exercise all or any of the powers of a District Court within the area subject to his jurisdiction.

[Act XVII of 1877, s. 32.]

36. Except as otherwise provided by any enactment for the time being in force—

No pecuniary limits of jurisdiction of Divisional Court or of Assistant Judge.

(*1*) the Divisional Court, and (*2*) the Court of the Assistant Judge, shall have jurisdiction for the adjudication of original civil suits without limit as regards the amount or value of the subject-matter of such suits; and

Pecuniary limits of jurisdiction of other Courts.

each of the Courts mentioned in the first column of the subjoined table shall have jurisdiction for the adjudication of civil suits when the amount or value of the subject-matter of such suits does not exceed the limit prescribed for such Court in the second column of the table:—

COURT.	Limit of jurisdiction.
	Rs.
(*a*)—The Court of the Subordinate Judge of the first class.	5,000
(*b*)—The Court of the Subordinate Judge of the second class.	1,000
(*c*)—The Court of the Subordinate Judge of the third class.	500
(*d*)—The Court of the Subordinate Judge of the fourth class.	100

[Section 33, Act XVII of 1877.]

Powers of Divisional Court and of Court of Assistant Judge.

37. (*1*) Any Divisional Court or any Assistant Judge, or Deputy Commissioner invested with the powers of Assistant Judge, may exercise, as regards the Courts under its or his control, the same powers of withdrawal, trial, disposal and transfer as are conferred by section 19 on the Chief Court.

(*2*) The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(*3*) The Local Government may, from time to time, confer upon any Assistant Commissioner the powers of an Assistant Judge under this section, and withdraw the same.

[Section 34, Act XVII of 1877.] XIV of 1882.

Power to distribute business.

38. Notwithstanding anything contained in the Code of Civil Procedure, every Divisional Court, Assistant Judge or Deputy Commissioner invested with the powers of Assistant Judge may, by written order, direct that any civil business cognizable by it or his Court and the Courts under its or his control (including the execution of decrees) shall be distributed among such Courts in such manner as it or he thinks fit:

Provided that no direction issued under this section shall empower any Court to exercise any jurisdiction in any suit of which the amount or value of the subject-matter exceeds its proper jurisdiction:

Provided also that no such direction shall be inconsistent with any direction or notification issued by the Local Government under section 15 or 16.

[Section 35, Act XVII of 1877.]

Ministerial officers of subordinate Courts.

39. (*1*) The ministerial officers of the Divisional Court and of the Courts of Assistant Judges and Courts of Small Causes shall be appointed, and may be suspended and dismissed, by the Judges of those Courts respectively, whose orders in such matters shall, in the case of a Divisional Court, be final, and in the case of any other Court be subject to the general control of the Divisional Court.

(*2*) The ministerial officers of all Courts controlled by an Assistant Judge, other than a Court of Small Causes, shall be appointed, and may be suspended and dismissed, by the Assistant Judge, subject to the general control of the Divisional Court.

(*3*) Every appointment under this section shall be subject to such rules as the Local Government, from time to time, prescribes in this behalf.

[Act XVII of 1877, s. 36.]

Power to fine ministerial officers.

40. (*1*) The Judge or presiding officer of every Court under the control of an Assistant Judge may fine, in an amount not exceeding one month's salary, any of the ministerial officers of such Court who is guilty of misconduct or neglect in the performance of the duties of his office.

(*2*) The Assistant Judge, subject to the general control of the Divisional Court, may, on appeal or otherwise, reverse or modify any such order made by any such Judge or officer, other than a Judge of a Court of Small Causes; and may of his own motion fine up to the amount of one month's salary any ministerial officer of any Court under his control other than a Court of Small Causes.

(*3*) Any Divisional Court or Assistant Judge, and the Judge of any Court of Small Causes, may fine any ministerial officer of his Court in an amount not exceeding one month's salary.

[New. *Cf.* Act VI of 1871, s. 25, and Act XIII of 1879, s. 24.]

Power to invest with Small Cause Court jurisdiction.

41. The Local Government may invest, within such local limits as it, from time to time, fixes, any Assistant Judge or Subordinate Judge of the first class with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of five hundred rupees, and any Subordinate Judge of the second or third class with similar jurisdiction up to the amount of fifty rupees; and may, whenever it thinks fit, withdraw the jurisdiction so conferred.

The Panjáb Courts Bill, 1884.
(Chapter V.—Of Appellate Jurisdiction in Civil Cases.—Sections 42-47.)
(Chapter VI.—Of Revenue Courts.—Section 48.)

CHAPTER V.

OF APPELLATE JURISDICTION IN CIVIL CASES.

First appeals to whom to lie.

42. (*1*) Appeals from the decrees and orders of a Court of any of the three grades last mentioned in section 4 in suits of the nature cognizable in Courts of Small Causes, and in suits of any other class which the Chief Court, with the sanction of the Local Government, may, from time to time, determine to place on the same footing, shall, when such appeals are allowed by law, and the value or amount of the subject-matter of the suit does not exceed five hundred rupees, lie to the Court of the Assistant Judge.

(*2*) Appeals from the decrees and orders of the Court of the Assistant Judge in original suits, when the amount or value of the subject-matter of the suit exceeds five thousand rupees, and appeals from the decrees and orders of the Divisional Court in original suits, shall, when such appeals are allowed by law, lie to the Chief Court.

(*3*) Appeals from decrees and orders in original suits not hereinbefore provided for shall, when such appeal is allowed by law, lie to the Divisional Court.

Further appeal to lie to the Chief Court on the certificate of the Divisional Court that the case is a fit one for further appeal.

43. When two Judges of a Divisional Court are unable to concur in a judgment varying or reversing the decree or order appealed against, or when some question of law or custom, or of general interest, is involved, the Judges may, if they regard the case as of sufficient importance to justify a further appeal, or if, when the certificate is applied for, one of the Judges who passed the decree is no longer attached to the Court, the remaining Judge may, if he regards the case as of sufficient importance to justify a further appeal, grant a certificate to any party to the appeal that the case is a fit one for a further appeal; and on such certificate being granted a further appeal shall lie to the Chief Court from the decree or order of the Divisional Court on any ground which would be a good ground of appeal if the decree or order had been passed in an original suit:

Provided that no further appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, or other suit placed on the same footing under section 42 when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

XIV of 1882.

Appellate decision of Assistant Judge or Divisional Court otherwise final.

44. Subject to the provisions of section 43, and of the Code of Civil Procedure, sections 595 and 622, the decision of the Court of the Assistant Judge or of the Divisional Court passed in appeal shall be final.

[*Cf.* Act XIII of 1879, s. 22.]

Appeals from decrees, &c., passed before Act comes into force.

45. For the purposes of sections 42 and 23, all decrees, orders and decisions passed before the date on which this Act comes into force shall be deemed—

(*a*) if passed by a Commissioner or Additional Commissioner, or by the Civil Judge of Peshawar, to have been passed by the Divisional Court;

(*b*) if passed by a Deputy Commissioner or other officer invested with the appellate jurisdiction of a Deputy Commissioner, to have been passed by an Assistant Judge;

(*c*) if passed by an Assistant Commissioner with full powers, to have been passed by a Subordinate Judge of the first class;

(*d*) if passed by an Assistant Commissioner not invested with full powers or with the appellate powers of a Deputy Commissioner, or by an Honorary Civil Judge, or by a Tahsíldár or Náib Tahsíldár, to have been passed by a Subordinate Judge of the second, third or fourth class:

Provided that—

(*1*) no right of appeal which has accrued under the existing law shall be taken away, and no certificate shall be required for a further appeal;

(*2*) if the amount or value of the subject-matter of the suit exceeds five thousand rupees, the appeal, if any is allowed by law, shall lie to the Chief Court; but in other cases in which the appeal now lies to the Commissioner's Court, the appeal shall lie to the Divisional Court.

[Act XVII of 1877, s. 40.]

Period of limitation.

46. (*1*) The period of limitation for an appeal under section 41 or section 42 shall run from the date of the decree, order or decision appealed against, and shall be as follows, that is to say:—

(*a*) when such appeal lies to the Court of the Assistant Judge or to the Divisional Court—sixty days;

(*b*) when such appeal lies to the Chief Court—ninety days.

(*2*) In computing such periods of sixty and ninety days, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877. XV of 1877.

[Act XVII of 1877, s. 41.]

Power to withdraw and try or to transfer appeal.

47. The Chief Court, the Divisional Court or the Court of an Assistant Judge may, on the application of any of the parties, after giving notice to the parties and hearing such of them as desire to be heard, or of its own motion, without giving such notice, withdraw any civil appeal pending in any Court under its superintendence or control, and try such appeal itself, or transfer the same for trial to any other Court under its superintendence or control and of a grade equal or superior to that of the Court from which such appeal is withdrawn.

CHAPTER VI.

OF REVENUE COURTS.

Certain classes of suits cognizable by Revenue Courts only.

48. Suits of any of the following classes instituted on and after the first day of October, 1884, shall be heard and determined in Revenue Courts and not otherwise:

(*a*) suits by tenants to establish a claim to a right of occupancy under Chapter II of the Panjáb Tenancy Act, 1868; XXVIII of 1868.

(*b*) suits by landlords under section 6 of the same Act to prove that a tenant presumed to have a right of occupancy under that section has no such right;

(*c*) suits for enhancement or abatement of rent under Chapter III of the same Act;

The Panjáb Courts Bill, 1884.
(Chapter VI.—Of Revenue Courts.—Sections 49-55.)

(*d*) suits for ejectment of a tenant under Chapter IV of the same Act;

(*e*) suits under section 25 of the same Act to contest liability to be ejected when notice of ejectment has been served;

(*f*) suits under section 40 of the same Act to determine the amount or value of the compensation to be paid or the terms of a lease to be granted to a tenant under section 39 of the same Act, or both;

(*g*) suits for arrears of rent on account of land, or on account of any rights of pasturage, forest-rights, fisheries or the like;

(*h*) suits for the recovery of any over-payment of rent;

(*i*) suits by lambardárs for arrears of land-revenue, payable through them by the co-sharers, or for village-expenses or other dues for which the co-sharers may be responsible to the lambardár;

(*j*) suits by co-sharers for their share of the profits of an estate or part thereof after payment of the land-revenue and village-expenses, or for a settlement of accounts;

(*k*) suits by assignees of land-revenue for arrears of revenue due to them as such;

(*l*) suits by superior proprietors for arrears of revenue due to them as such; and

(*m*) suits under section 9 of the Specific Relief Act to recover possession of land assessed to the land-revenue or liable to be so assessed, or of which the land-revenue has been wholly or in part released, compounded for, redeemed or assigned.

I of 1877.

49. If in any suit of any of the classes mentioned in clauses (*a*) to (*l*) of the last preceding section it appears that the parties are at issue on any question of proprietary title, or on the question of the existence of the relation of landlord and tenant between them, the Revenue Court shall not determine such question, but may either proceed to decide the case by passing a decree contingent upon the determination of such question by a Civil Court, giving such directions as it may think proper as to the party with whom it shall rest to institute a suit for the purpose, or, on the application of either party, may stay proceedings to enable the party applying to institute a suit for the purpose in a Civil Court; but the proceedings shall not be stayed under this section for more than three months unless such suit is in the meantime instituted; nor, when a decree has been passed contingent upon the determination of such question by a Civil Court, shall any execution be issued, property sold or person ejected or imprisoned thereunder until the receipt of a copy of the judgment of the Civil Court on the question, unless the decree has been passed against the party whose duty it is to sue and he fails to institute the suit for more than three months from the date of the decree.

Procedure when question of proprietary title or of existence of relation of landlord and tenant arises.

50. All Assistant Commissioners and Tahsíldárs shall have power to try suits of the classes mentioned in section 48, clauses (*g*), (*i*), (*k*) and (*l*), when the amount or value of the claim does not exceed one hundred rupees; and the Local Government may invest Náib Tahsíldárs with the same powers.

Certain revenue powers of Assistant Commissioners and Tahsíldárs to be exercised *ex officio*.

51. The Local Government may invest any Assistant Commissioner or Tahsíldár with power to try all suits of the classes mentioned in the same section, clauses (*d*) and (*f*) to (*m*), both inclusive.

Additional powers with which Assistant Commissioners and Tahsíldárs may be invested.

52. The Deputy Commissioner shall have power to try suits of any of the classes mentioned in section 48, and the Local Government may specially invest any Assistant Commissioner with the powers of a Deputy Commissioner for the trial of suits of the classes mentioned in clauses (*a*), (*b*), (*c*) and (*e*) of the same section.

Revenue powers of Deputy Commissioners and power to invest Assistant Commissioners therewith.

53. *(1)* The Local Government may, with the previous sanction of the Governor General in Council, make rules consistent with this Act for regulating the procedure of Revenue Courts in cases under this chapter for which a procedure is not prescribed thereby; 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 Courts.

[*Cf.* Act XVIII of 1881, s. 19.]

Procedure of Revenue Courts how to be regulated.

XIV of 1882.

(2) Until such rules are made, Revenue Courts shall be guided in cases under this chapter by the provisions of the Code of Civil Procedure, section 2, Part I, except Chapters XVI and XX, Parts II, III and IV, Chapters XXXVII and XXXVIII, XLI, XLIII and XLIV, and Parts VIII and X, so far as applicable; and the Court of the Financial Commissioner shall, in respect of such cases, be deemed to be the High Court within the meaning of the said Code, and shall exercise, as regards the Courts under his control, the same powers of withdrawal, trial, disposal and transfer as are conferred by sections 19 and 47 on the Chief Court; and the Commissioner and Deputy Commissioner shall respectively exercise, as regards the Courts under his control, the same powers of withdrawal, trial, disposal and transfer as are conferred by sections 37 and 47 upon a Divisional Court and an Assistant Judge.

XIV of 1882.

54. Every Commissioner or Deputy Commissioner may, by written order, direct that any business cognizable under this chapter by his Court, and the Courts under his control (including the execution of decrees) shall be distributed among such Courts in such manner as he thinks fit:

Power to distribute business.

Provided that no direction issued under this section shall empower any Court to exercise any jurisdiction which it is not empowered to exercise under section 50, section 51 or section 52.

55. All decisions and orders (except decisions and orders in suits under section 9 of the Specific Relief Act) of Assistant Commissioners not invested with the powers of a Deputy Commissioner under section 52, and of Tahsíldárs, shall be appealable to the Deputy Commissioner, whose order thereon shall be final, unless when the amount or value of the subject-matter exceeds one hundred rupees, when a further appeal shall lie to the Commissioner, or, in case the amount or value of the subject-matter exceeds five thousand rupees, to the Financial Commissioner.

Cases appealable to Deputy Commissioner.

I of 1877.

Further appeal in certain cases.

The Panjáb Courts Bill, 1884.
(Chapter VI.—Of Revenue Courts.—Sections 56-64.)

56. *(1)* All decisions and orders of Deputy Commissioners and Assistant Commissioners invested with the powers of a Deputy Commissioner in suits of the classes mentioned in clauses (*a*), (*b*), (*c*) and (*e*) of section 48, and in other suits (except suits under section 9 of the Specific Relief Act) in which the value of the subject-matter exceeds one hundred rupees, shall be appealable to the Commissioner, or in case the amount or value exceeds five thousand rupees, to the Financial Commissioner.

Cases appealable to Commissioner or Financial Commissioner.

I of 1877.

(2) In all other cases their judgments and orders shall be final.

Other judgments to be final.

57. An appeal from the decisions of the Commissioner on appeals in suits of the classes mentioned in clauses (*a*), (*b*), (*c*) and (*e*) of section 48 shall lie to the Financial Commissioner, unless when the Commissioner dismisses the appeal. All other judgments and orders of the Commissioner on appeals shall be final, subject to revision by the Financial Commissioner.

Further appeal to Financial Commissioner in certain cases.

Other judgments of Commissioner to be final.

58. The Financial Commissioner may at any time call for any case which has come before any Commissioner or any Court subordinate to him, and pass such orders thereon consistent with the law applicable thereto as he thinks fit.

Revisional jurisdiction of Financial Commissioner.

59. *(1)* The period of limitation for an appeal under section 55, section 56 or section 57 shall run from the date of the decree, order for decision appealed against, and shall be as follows, that is to say:—

Limitation of appeals under this chapter.

(*a*) when such appeal lies to the Court of the Deputy Commissioner or of the Commissioner—sixty days;

(*b*) when such appeal lies to the Financial Commissioner—ninety days.

(2) In computing such periods of sixty and ninety days, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

XV of 1877.

60. Subject to the general superintendence and control of the Financial Commissioner, every Commissioner shall control the Revenue Courts of all Deputy Commissioners and the Revenue Courts controlled by Deputy Commissioners within his Division; and

Controlling powers of Financial Commissioner, Commissioner and Deputy Commissioner.

subject to the control of the Commissioner, every Deputy Commissioner shall control the Revenue Courts of all Assistant Commissioners and Tahsíldárs and officers invested with the powers of Deputy Commissioner, Assistant Commissioner or Tahsíldár within his District.

61. Except for the purpose of exercising control over any other Revenue Court, any person exercising the powers of a Revenue Court of any grade under section 49 or section 51 shall be deemed to be a Court of such grade for all the purposes of this Act, and shall exercise such powers and discharge the functions of such Court within such local limits and in such classes of cases as the Local Government may, from time to time, direct.

Persons invested with powers under this chapter to be deemed to be Courts of corresponding grades, and where and in what cases to exercise their powers.

62. When more than one Financial Commissioner is appointed, the Local Government may, from time to time, make rules as to the distribution of revenue, judicial and other business between the persons so appointed; and, until such rules are made, the Financial Commissioner who is senior in respect of his appointment as such may transfer such business as he thinks fit to the other Financial Commissioner for disposal, and may withdraw and himself dispose of any business so transferred and not disposed of.

Distribution of business between Financial Commissioners.

63. If either Financial Commissioner desires to obtain the opinion of the other upon any question arising in any appeal under this chapter pending before him, he may forward the record to the other Financial Commissioner with a statement of the question upon which he desires his opinion; and the latter, after such examination and such hearing (if any) as he thinks fit, shall record his opinion upon the question referred to him; and the Financial Commissioner who made the reference shall proceed to dispose of the appeal after considering the opinion so obtained.

Consultation between Financial Commissioners.

64. *(1)* The Local Government may, from time to time, by notification in official Gazette, declare that a settlement of land-revenue is in progress in any local area, and invest any officer making or controlling such settlement, either by name or in virtue of his office, with all or any of the powers of any Court constituted under this Act for the purpose of trying all or any specified class of suits and appeals relating to land, or the rent, revenue or produce of such land, arising in such local area.

[Act XVII of 1877, s. 40.]

Power to invest Settlement-officers with powers of Civil or Revenue Courts in certain cases.

(2) The publication of any notification under this section shall be conclusive evidence that a settlement of land-revenue is in progress in the local area to which the notification refers.

(3) The Local Government may cancel any such notification.

(4) While such notification continues in force, such powers shall be exercised by the officers so invested, and not otherwise:

Provided that the Local Government may, by order published in the official Gazette, direct that any jurisdiction with which any officer may have been invested by such notification shall be exercised solely by the Court by which such jurisdiction would have been exercised if such notification had not been published:

Provided also that any cases pending before any officer under such notification when it is cancelled may, notwithstanding such cancellation, be

The Panjáb Courts Bill, 1884.
(Chapter VII.—Miscellaneous and Supplementary Provisions.—Sections 66-73.)

disposed of by him as if it continued in force, unless the Local Government directs (as it is hereby empowered to do) that such cases shall be transferred for disposal to the Court by which they would have been disposed of if such notification had not been published.

Explanation.—In this section "land" means land assessed to the land-revenue or whereof the land-revenue has been wholly or in part released, compounded for, redeemed or assigned, and all land the property of Government not within the site of any town or village.

[Act XVII of 1877, s. 50.]

Power to alter subordination of Courts for purposes of section 64.

65. For the purposes of section 64 the Local Government may, notwithstanding anything in this Act, from time to time direct that any of the Courts mentioned in this Act (except the Chief Court) shall, in respect of any specified class of cases, be subordinate to, or subject to the control or superintendence of, any authority other than those specified in this Act.

CHAPTER VII.

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS.

[Act XVII of 1877, s. 46; ... Act ... 1871, s. ... Act XVII ... 1877, s. 19; and Act XIII of 1879, s. 23.]

Presiding Officer of Court not to try certain suits and appeals.

66. *(1)* Except with the consent of the parties, no presiding officer of any Court having jurisdiction under this Act shall try any suit or appeal to which he is a party or in which he is personally interested, or any appeal against a decree or order passed by himself, or shall adjudicate upon any proceeding connected with or arising out of such suit or appeal.

(2) When any such suit, appeal or proceeding comes before him, he shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

(3) The superior Court shall thereupon dispose of the case in the manner prescribed by section 25 of the Code of Civil Procedure.

... XIV of 1882.

... Act XVII ... 1877, s. ...

Rules when to have force of law.

67. All rules made and forms prescribed under section 28 and section 29, clauses *(a)*, *(b)*, *(d)* and *(e)*, shall be submitted for sanction to the Local Government, and, on receiving such sanction, shall be published in the official Gazette, and shall thereupon have the force of law.

[Act XVII of 1877, s. 48.]

Local Government may transfer power conferred by section 27 to a single Judge.

68. *(1)* The Local Government may, from time to time, with the previous sanction of the Governor General in Council, by notification in the official Gazette, appoint a single Judge of the Chief Court to exercise the power of superintendence conferred on such Court by section 27, and may cancel such notification.

(2) While such notification continues in force, such power shall be exercised by the Judge appointed thereby, and not otherwise.

Act ... 1879.

Jurisdiction under Divorce Act.

69. For the purposes of the Indian Divorce Act, any Judge of the Divisional Court shall be deemed to be the District Judge throughout the Division over which that Court has jurisdiction.

[Act VI of 1871, s. 17; Act XIII of 1879, s. 38].

Vacations.

70. *(1)* Subject to such orders as may, from time to time, be issued by the Governor General in Council, and to the approval of the Local Government, the Chief Court shall prepare a list of days to be observed in each year as close holidays in the Civil Courts subordinate thereto.

(2) Such list shall be published in the official Gazette, and the said days shall be observed accordingly.

Pending proceedings.

71. *(1)* All cases or proceedings pending in any Civil Court on the first day of October, 1884, may be disposed of as if this Act had not been passed, unless the Chief Court directs (as it is hereby empowered to do) that such cases or proceedings shall be transferred for disposal to the Courts established under this Act which would have had jurisdiction if they had been in existence when such cases or proceedings were instituted.

(2) For the purposes of this section, all appeals in civil suits or proceedings pending on the said day shall—

(a) if preferred from the decrees, orders or decisions of Commissioners, Additional Commissioners or the Civil Judge of Peshawar be deemed to be appeals from the Divisional Court;

(b) if preferred from the decrees, orders or decisions of Deputy Commissioners or officers invested under section three of Act XIV of 1875 with the appellate powers of Deputy Commissioners, or with the full powers of an Assistant Commissioner, be deemed to be appeals from the Court of the Assistant Judge; and

(c) if preferred from the decrees, orders or decisions of Assistant Commissioners not invested with full powers, or with the appellate powers of Deputy Commissioners, or of Honorary Civil Judges not invested with the full powers of an Assistant Commissioner, or of Tahsíldárs or Náib Tahsíldárs, be deemed to be appeals from Subordinate Judges of the second, third or fourth class.

... XIV of 1882.

Explanation of sections 617 and 622, Civil Procedure Code.

72. For the purposes of sections 617 and 622 of the Civil Procedure Code, the decree of an Appellate Court subordinate to the Chief Court shall be deemed to be final when no certificate permitting a further appeal to the Chief Court under section 43 has been granted, and a case decided by an Appellate Court in which no such certificate has been granted shall be deemed to be a case in which no appeal lies to the Chief Court.

... VII of 1870.

Amendment of the first schedule annexed to the Court-fees Act, 1870.

73. To the first schedule annexed to the Court-fees Act, 1870, the following shall be added :—

NUMBER.		PROPER FEE.
3. Application to the Chief Court of the Panjáb for the exercise of its revisional jurisdiction under section 622 of the Code of Civil Procedure.	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.	Two rupees.
	When such amount or value exceeds twenty-five rupees.	The fee leviable on memorandum of appeal.

The Panjáb Courts Bill, 1884.
(Chapter VII.—Miscellaneous and Supplementary Provisions.—Sections 74-75.)

... XIV of 1882.

Refund of fee paid on application for revision.

74. If the Chief Court, on an application under section 622 of the Civil Procedure Code, on which a fee has been paid under the last preceding section, sets aside or modifies the decree or order of a subordinate Court, or remands the case for a fresh decision, it may grant to the applicant a certificate authorizing him to receive back from the Collector the full amount of fee paid on the application, or any smaller amount which, with regard to the circumstances of the case, it may think proper to order to be refunded.

Saving of certain appointments, rules and forms, notifications, powers and orders.

75. All appointments made under sections 5 and 22 of Act XVII of 1877, directions given under section 23, rules and forms prescribed under sections 26 and 27, and notifications published, powers conferred and orders issued under section 49, of the same Act, shall, so far as may be, be deemed to have been respectively made, given, prescribed, published, conferred and issued under this Act.

SCHEDULE.

ACTS REPEALED.

(See section 2.)

Number and year.	Title of Act.	Extent of repeal.
Act IV of 1869	The Indian Divorce Act.	So much of section 3 as defines "District Judge" in the Panjáb to mean the "Commissioner of a Division."
Act X of 1870	The Land Acquisition Act, 1870.	So much of section 3 as defines "Court" in the Panjáb to mean the "Commissioner of a Division."
Act XIV of 1875.	The Panjáb Judicial Administration Act, 1875.	So far as it relates to civil or criminal judicial powers.
Act XVII of 1877.	The Panjáb Courts' Act, 1877.	The whole.

STATEMENT OF OBJECTS AND REASONS.

AN essential portion of the scheme for the reorganization of the civil administration in the Panjáb, which has recently received the sanction of the Secretary of State for India, is to be found in the improvement of the judicial agency and the reform of the appellate system. The arrangements proposed for this purpose render necessary very large changes in the law under which the Panjáb Courts are now constituted (the Panjáb Courts Act, 1877), and the most convenient mode of giving effect to them appears to be to repeal that Act and re-enact its provisions with the necessary additions and modifications. This it is proposed to do by the present Bill.

2. The changes in the law which it is intended to make will now be noticed.

3. Chapter II deals with the constitution of the Courts. The present law confers the civil judicial powers of the Courts subordinate to the Chief Court upon the executive officers of Government from the Commissioner down to the Tahsíldár, though Act XIV of 1875 enables the Local Government to confer the powers of a Deputy Commissioner or of a Tahsíldár upon other persons, and under that Act civil judicial powers have been conferred upon a number of officers known as Judicial Assistants and Munsifs, whose functions are mainly, though not always exclusively, judicial. Similarly, the Civil and Sessions Judge of Peshawar and certain Additional Commissioners have been invested with the judicial powers of Commissioners under Act XVII of 1877. It is now proposed to relieve Commissioners and Deputy Commissioners, as a rule, of civil judicial functions, though they will continue to exercise jurisdiction in certain classes of cases which will be transferred from the Civil to the Revenue Courts, and they may also be invested with civil judicial powers where the judicial work is so light as not to require the creation of special Courts. Commissioners will likewise be, as a rule, relieved of the functions as Sessions Judges which now devolve upon them, but this can be done under the Criminal Procedure Code, without special legislation.

4. Special designations which do not imply the exercise of executive functions are accordingly given to the Courts subordinate to the Chief Court (section 4).

5. With a view to strengthen the Courts of appeal in order to admit of greater finality being given to appellate decisions, it is proposed that the Court immediately subordinate to the Chief Court should ordinarily consist of two Judges, and that, while one of these Judges may be enabled by rule to exercise certain of the powers of the Court, a single Judge should not have power in the exercise of his appellate jurisdiction to reverse any order other than an interlocutory order passed by any Court.

6. Power is also taken (in section 7) to appoint the Commissioner of a Division to be one of the Judges of a Divisional Court in addition to his other duties, as it is in contemplation to establish one of the Divisional Courts at Derá Ismaíl Khán, and only one Judge will be available for that Court unless the Commissioner of the Deráját Division is appointed as one of the Judges.

7. The appointment of Assistant Judges and Subordinate Judges of the first class by the Local Government, and of Subordinate Judges of the second, third and fourth classes, corre-

sponding to the present Munsifs, by the Chief Court, subject to rules to be made by the Local Government, is provided for by section 9. The Court of the Assistant Judge will replace the Court of the Deputy Commissioner or Judicial Assistant under the present law, and no provision has hitherto been made by law as to the authority by which Munsifs may be appointed or removed.

8. The other differences between Chapter II of the Bill and the corresponding chapter of Act XVII of 1877 follow upon those which have been already described.

9. The third chapter, which provides for the jurisdiction and powers of the Chief Court, only differs from the corresponding chapter of Act XVII of 1877 in that section 19, relating to the transfer of suits, is assimilated to section 25 of the Civil Procedure Code; section 21 is modified so as to enable the Chief Court to make rule for the exercise by one or more of the Judges of a Divisional Court of the powers of that Court, except as regards the reversal of decrees, sentences or decisions of any Court, to provide by rule for the constitution of a full bench of the Chief Court, and to delegate to one of its Judges the power of determining what Judges shall sit alone or as a bench of the Court, and power is also taken to enable a single Judge of the Chief Court or of a Divisional Court to reverse an interlocutory order; sections 31 and 32 replace the reference in section 29 of the present Act to sections 633 and 637 of the Civil Procedure Code, and add what is necessary of sections 638 and 639 of that Code; and section 33 provides for the delivery of the judgments of a bench of Judges by any Judge who was a member of that bench, in accordance with existing practice, and with the analogy of section 199 of the Civil Procedure Code.

10. Chapter IV relates to the jurisdiction and powers of Courts subordinate to the Chief Court. The Divisional Court is declared to be the principal Civil Court of original jurisdiction, but the Local Government is enabled to empower any Assistant Judge or Deputy Commissioner with the powers of an Assistant Judge to exercise any of the powers of a District Court, so as to obviate the inconvenience of unduly limiting the number of Courts which can exercise jurisdiction under certain laws, *e. g.*, Acts XL of 1858, XXVII of 1860 and IX of 1861.

11. While the jurisdiction of the Divisional Court and of the Court of the Assistant Judge is unlimited as respects the value or amount in litigation, thus corresponding with the jurisdiction now exercised by Commissioners and Deputy Commissioners, that of the Subordinate Judge of the first class is limited to Rs. 5,000 instead of Rs. 10,000, which is the limit of the present jurisdiction of an Assistant Commissioner with full powers, and that of other Subordinate Judges may extend either to Rs. 100, to Rs. 500 or to Rs. 1,000.

12. In section 41 power is taken to invest Assistant Judges or Subordinate Judges with the jurisdiction of a Small Cause Court Judge for the trial of suits cognizable by a Small Cause Court within certain limits of value or amount.

13. The other changes in Chapter IV are those which are rendered necessary by the alterations of the law already described.

14. Chapter V relates to appellate jurisdiction in civil cases. It embodies the modifications proposed in the appellate system with the view of restricting the right of appeal so far as it is considered that the improved organization of the Courts will admit of this. The second appeals allowed by the Code of Civil Procedure, and the further appeals allowed by the present Panjáb Courts Act are abolished, and the decisions of appellate Courts are made final, except that the Judges of a Divisional Court are enabled, when they differ as to the judgment which should be passed, or when some question of law or custom or of general interest is involved, if they think the case of sufficient importance to justify further appeal, to grant a certificate permitting a further appeal to the Chief Court.

15. Appeals to Assistant Judges are confined to suits not above Rs. 500 in value, either of the Small Cause Court class or of any other class which the Chief Court, with the sanction of the Local Government, may determine to put upon the same footing, and appeals in suits above Rs. 5,000 in value, as well as appeals from decrees of the Divisional Court, will, when allowed by law, lie to the Chief Court, all other appeals allowed by law lying to the Divisional Court.

16. Section 47, relating to the transfer of appeals, has been modified to the same extent as section 19.

17. Chapter VI, which deals with Revenue Courts, is new, having been rendered necessary by the transfer of certain classes of suits enumerated in section 48 from the Civil to the Revenue Courts. It provides for the jurisdiction and powers of these Courts, for their procedure, for appeals from their decisions, for the revisional jurisdiction of the Financial Commissioner, and the controlling powers of the Financial Commissioner, Commissioner and Deputy Commissioner, respectively, for the transfer of suits and appeals, and for the distribution of business between Financial Commissioners when more than one such officer is appointed, the sanction which has been given by the Secretary of State to the appointment of a second Financial Commissioner rendering a provision of this nature necessary. Sections 64 and 65 correspond with sections 49 and 50 of the present Act, enabling the Local Government to confer judicial powers upon Settlement-officers, the only addition being that the officer may be so empowered either by name or in virtue of his office.

18. Chapter VII contains miscellaneous and supplementary provisions, some of which correspond with sections 46 to 48 of the present Act. Of the others, section 69 provides that any Judge of the Divisional Court shall be deemed to be the District Judge throughout its jurisdiction for the purposes of the Indian Divorce Act; section 70 provides for vacations; and section 71 for proceedings pending when this Bill becomes law; section 72 interprets certain expressions in sections 617 and 622 of the Civil Procedure Code so as to prevent doubt as to the cases in which the revisional jurisdiction of the Chief Court may be exercised; section 73 amends the Court-fees Act so that the fee leviable on a memorandum of appeal, when it exceeds the fee leviable on a petition to the Chief Court, may be charged on an application to it for the exercise of its revisional jurisdiction under section 622 of the Civil Procedure Code; and section 74 enables the Court in certain cases to grant a certificate authorizing the refund of the fee so charged.

The 25th June, 1884.

D. G. BARKLEY.

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th July, 1884, and was referred to a Select Committee:—

No. 8 OF 1884.

THE KHOJÁ SUCCESSION BILL, 1884.

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SCHEDULE.—PORTIONS OF THE INDIAN SUCCESSION ACT (X OF 1865) MODIFIED FOR APPLICATION TO WILLS MADE BY KHOJÁS.

Explanation of abbreviation used in the margin.

"Bo. Bill" refers to the draft Bill prepared by the Commission and received with the letter from the Government of Bombay, No. 216, dated 14th January, 1880.

A Bill to amend and define the law of Testamentary and Intestate Succession to Khojás.

WHEREAS it is expedient to amend and define the law applicable to testamentary and intestate succession to Khojás; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. Local extent.

1. This Act may be called the Khojá Succession Act, 1884; and it shall extend to the whole of British India.

Application. [Act X of 1865, s. 5.]

2. Except as provided by any other law for the time being in force, succession to the property, whether moveable or immoveable, in British India of a Khojá dying on or after the first day of January eighteen hundred and eighty-five shall be regulated by the rules contained in this Act, wherever he may have had his domicile at the time of his death.

Explanation.—Property in British India includes obligations enforceable there.

Definitions. [Bo. Bill, s. 3.]

3. (*1*) In this Act, unless there is something repugnant in the subject or context,—

"son" means a legitimate son, and does not include an adopted son:

"grandson" means a son's son:

"great-grandson" means a grandson's son:

"daughter" means a legitimate daughter:

"father" and "mother" do not include step-father and step-mother:

"grandfather" and "grandmother" do not include a father's step-father or step-mother:

"brother" and "sister" do not include step-brother and step-sister, nor half-brother and half-sister:

"half-brother" means son of the same father but by another wife:

[New.] "lineal male descendant," used with reference to any person, means a male descended from that person through males only:

"degree" means a degree of kindred computed according to the rules laid down in sections 21, 22 and 24 of the Indian Succession Act, 1865, and the table of consanguinity thereto annexed: [X of 1865. [Home Dept. Office Memo. dated 12th August, 1882, para. 7.]

"undivided property" means a share in the property belonging to an undivided family:

"restricted owner," used with reference to any property, means a female acquiring that property in the manner specified in section 21, section 23, sub-section (2), section 24, sub-section (1), section 27 and section 39. [New.]

(2) When it is provided in this Act that the members of any class shall take property and the shares which they are respectively to take therein are not specified, they shall take equal shares therein.

No distinction between ancestral and self-acquired, nor between moveable and immoveable, property. Child in womb. [Bo. Bill, s. 7.]

4. For the purposes of this Act there shall be no distinction between ancestral and self-acquired property, nor between moveable and immoveable property, nor between those born in the lifetime of a deceased owner of property and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive. [Act X of 1865, s. 23.]

The Khojá Succession Bill, 1884.

(Chapter II.—Of Succession to the Undivided Property of a Male Khojá dying intestate.—Sections 5-6.),

(Chapter III.—Of Succession to the Separate Property of a Male Khojá dying intestate.—Sections 7-20.)

CHAPTER II.

OF SUCCESSION TO THE UNDIVIDED PROPERTY OF A MALE KHOJÁ DYING INTESTATE.

[Bo. Bill, ss. 8-12.]

Where there are lineal male descendants within fourth degree.

5. (*1*) When a male Khojá owning undivided property dies intestate in respect of that property, leaving legitimate lineal male descendants not more remote than the fourth degree, every such descendant shall be entitled to a share in that property unless one of the persons through whom he is descended from the intestate is living.

[Act X of 1865, s. 33.] (*2*) When the sharers under sub-section (1) all stand in the same degree of kindred to the intestate, their shares shall be equal.

(*3*) When the sharers under sub-section (1) do not all stand in the same degree of kindred to the intestate, the property shall be divided into such a number of equal shares as will correspond with the number of the sharers who stood in the nearest degree of kindred to him at his decease, and of his lineal male descendants of the like degree of kindred who died before him, and through whom the other sharers are descended from him; and one such share shall be allotted to each of the sharers who stood in the nearest degree of kindred to the intestate at his decease; and one such share shall be allotted in respect of each such deceased male descendant; and the share allotted in respect of each such deceased male descendant shall be divided among the sharers descended through him, in such manner that the sons of any person shall always take that which their father would have been entitled to if he had survived the intestate.

[Bo. Bill, s. 13.]

Where there are no lineal male descendants within fourth degree.

6. In default of legitimate lineal male descendants as aforesaid, the property of the intestate shall be divided equally among all the male members of his undivided family living at his death.

CHAPTER III.

OF SUCCESSION TO THE SEPARATE PROPERTY OF A MALE KHOJÁ DYING INTESTATE.

[Bo. Bill, s. 16.]

Where there are lineal male descendants within fourth degree.

7. When a male Khojá owning property, not being undivided property, dies intestate in respect of that property, leaving legitimate lineal male descendants not more remote than the fourth degree, the property shall descend in the manner provided in section 5.

[Bo. Bill, s. 17.]

In default of such lineal male descendants, property to belong to the intestate's father.

8. In default of legitimate lineal male descendants as aforesaid, the intestate's father shall succeed to the property.

[Bo. Bill, s. 18.]

In default of the father, to the mother.

9. In default of the father, the intestate's mother shall succeed to the property.

[Bo. Bill, s. 19, see infra, s. 24.]

In default of the mother, to the widows.

10. In default of the mother, the widow or widows of the intestate shall succeed to the property.

[Bo. Bill, 20.]

In default of widows, to the daughters.

11. In default of widows, the daughters of the intestate shall succeed to the property.

[Bo. Bill, 21.]

In default of daughters, to daughters' sons and to brothers.

12. (*1*) In default of daughters, the sons of daughters shall succeed to the property, the sons of each daughter taking an equal share:

Provided that, if the intestate has left brothers surviving him, the daughters' sons shall succeed to a moiety of the property, the sons of each daughter taking an equal share, and the brothers shall take the other moiety.

(*2*) In default of daughters' sons, the brothers shall take the whole of the property.

[Bo. Bill, 22.]

In default of brothers, to sons' daughters.

13. In default of brothers, the daughters of the intestate's sons shall succeed to the property, the daughters of each son taking an equal share.

[Bo. Bill, 23.]

In default of sons' daughters, to brothers' sons.

14. In default of sons' daughters, the sons of the intestate's brothers shall succeed to the property, the sons of each brother taking an equal share.

[Bo. Bill, 24.]

In default of brothers' sons, to half-brothers.

15. In default of brothers' sons, the half-brothers of the intestate shall succeed to the property.

[Bo. Bill, 25.]

In default of half-brothers, to half-brothers' sons.

16. In default of half-brothers, the sons of half-brothers shall succeed to the property, the sons of each half-brother taking an equal share.

[Bo. Bill, 26.]

In default of half-brothers' sons, to the grandfather; and in default of the grandfather, to the grandmother.

17. In default of sons of half-brothers, the paternal grandfather shall succeed to the property; and in default of the paternal grandfather, the paternal grandmother shall succeed to it.

[Bo. Bill, 27.]

In default of the grandmother, to paternal uncles.

18. In default of the paternal grandmother, the paternal uncles shall succeed to the property.

[Bo. Bill, 28.]

In default of paternal uncles, to sisters.

19. In default of paternal uncles, the sisters of the intestate shall succeed to the property.

[Bo. Bill, 29.]

In default of sisters, to the nearest of kin.

20. In default of sisters, the property shall belong to those of the intestate's relatives on the father's side who stand in the nearest degree of kindred to the intestate; and, in default of relatives on the father's side, to those of the intestate's relatives on the mother's side who stand in the nearest degree of kindred to the intestate:

Provided that no female relative shall be entitled to share in the property if there is a male relative standing on the same side in the same degree of kindred to the intestate.

5

The Khojá Succession Bill, 1884.

(Chapter IV.—Of Succession to the Absolute Property of a Female Khojá dying intestate.—Sections 23-27.)

(Chapter V.—Of Property which a Female takes as Restricted Owner, and the further Succession to the same.—Section 28.)

[Bo. Bill, s. 33. See *sec.* 48, *infra.*]

21. If, at the death of the intestate, any of the male heirs mentioned in sections 7 to 18 (both inclusive), or any male relative of the intestate on the father's side not more remote than the seventh degree of kindred to the intestate, is living, a female succeeding under any of the foregoing sections shall take the property as restricted owner.

When female takes as restricted owner under foregoing sections.

[Bo. Bill, s. 30.]

22. When a male Khojá dies intestate in respect of any ornaments belonging to him, and not being undivided property, which are in the possession of his wife with his consent, and the wife does not acquire the ownership, whether absolute or restricted, of the ornaments under this Act, she shall be entitled to retain possession of them until she dies or re-marries.

Widow's right to retain possession of ornaments.

CHAPTER IV.

OF SUCCESSION TO THE ABSOLUTE PROPERTY OF A FEMALE KHOJÁ DYING INTESTATE.

[Bo. Bill, s. 34.]

23. (*1*) When an unmarried female Khojá owning property otherwise than as a restricted owner dies intestate in respect of that property, it shall belong to her brothers; in default of brothers, to her father; in default of the father, to her mother; in default of the mother, to the relatives of the intestate on the father's side who stand in the nearest degree of kindred to the intestate; and, in default of such relatives, to the relatives on the mother's side who stand in the nearest degree of kindred to the intestate.

Descent of unmarried female's absolute property.

[Bo. Bill, ss. 32 & 33.]

(*2*) If at the death of the intestate any male relative of the intestate on the father's side not more remote than the seventh degree of kindred to the intestate is living, a female succeeding under this section, whether in preference to or together with that male relative, shall take the property as restricted owner.

[Bo. Bill, s. 40.]

24. (*1*) When a married female Khojá owning property otherwise than as restricted owner dies intestate in respect of that property, it shall belong to her sons and daughters; and the daughters shall take it as restricted owners.

Descent of married female's absolute property.

[Bo. Bill, s. 32.]

(*2*) In default of sons and daughters, the property shall, except as provided in sub-section (3), belong to her husband.

(*3*) If the property has been given to the female on the occasion of her marriage separately from the "Dej" for her sole use and benefit by her parents or relatives, it shall, in default of sons and daughters, belong—

(*a*) to her father; and

(*b*) in default of the father, to the person to whom it would then have belonged if it had been the property of the father at his death and had descended without having been alienated.

(*4*) A female taking property under clause (*b*) of sub-section (3) shall not take it as restricted owner.

[Bo. Bill, s. 37.]

25. (*1*) When a female Khojá, being a widow or divorced and owning property otherwise than as restricted owner, dies intestate in respect of that property, leaving legitimate lineal descendants not more remote than the fourth degree, every such descendant shall be entitled to a share of the property unless one of the persons through whom he is descended from the intestate is living.

Descent of absolute property of widow or divorced female leaving lineal descendants within the fourth degree.

(*2*) When the sharers under sub-section (1) all stand in the same degree of kindred to the intestate, their shares shall be equal.

[Act X of 1865, s. 33.]

(*3*) When the sharers under sub-section (1) do not all stand in the same degree of kindred to the intestate, the property shall be divided into such a number of equal shares as may correspond with the number of the sharers who stood in the nearest degree of kindred to her at her decease, and of lineal descendants of the like degree of kindred who died before her and through whom the other sharers are descended from her; and one such share shall be allotted to each of the sharers who stood in the nearest degree of kindred to the intestate at her decease; and one such share shall be allotted in respect of each such deceased descendant; and the share allotted in respect of each such deceased descendant shall be divided among the sharers descended through him, in such manner that the children of any person shall always take what that person would have been entitled to if he had survived the intestate.

[Bo. Bill, s. 37.]

26. (*1*) In default of the descendants mentioned in section 25, the property shall belong to the brothers of the intestate; in default of brothers, to her father; in default of the father, to her mother.

Where there are no such lineal descendants.

(*2*) In default of the mother, the property shall belong to the relatives of the intestate on the father's side who stand in the nearest degree of kindred, and, in default of such relatives, to the relatives of the intestate on the mother's side who stand in the nearest degree of kindred.

[Bo. Bill, s. 32.]

27. If, at the death of the intestate, any of the male heirs mentioned in section 25 and the first sub-section of section 26, or any male relative of the intestate on the father's side not more remote than the seventh degree of kindred to the intestate, is living, a female succeeding under section 25 or section 26, whether in preference to or together with that heir or relative, shall take the property as restricted owner.

When female taking under section 25 or 26 takes as restricted owner.

CHAPTER V.

OF PROPERTY WHICH A FEMALE TAKES AS RESTRICTED OWNER, AND THE FURTHER SUCCESSION TO THE SAME.

[Bo. Bill, s. 3; "life-estate," "stridhan."]

28. A female taking property as restricted owner shall be absolutely entitled to the use of, and the income accruing from, that property during her life; and, except as otherwise provided by this Act, shall have all the other rights and powers of an absolute owner in respect of that property.

Nature of restricted ownership generally.

The Khojá Succession Bill, 1884.

(Chapter V.—Of Property which a Female takes as Restricted Owner, and the further Succession to the same.—Sections 29-36.)

[Bo. Bill, s. 3; "life-estate."]

29. Except as provided by section 31, no right to, over or in respect of property created by a restricted owner of that property shall have effect for any time beyond her life:

Powers of alienation limited.

[New.]

Provided that nothing in this section shall affect a lease granted at a fair rent for a term not exceeding twenty years, and without payment of any fine or premium, or a right created for consideration in favour of a person acting in good faith, and without notice of the ownership being restricted.

[Act II of 1882, s. 3.]

Explanation.—A person has notice of the ownership being restricted when he actually knows that it is restricted, or when, but for wilful abstention from enquiry or gross negligence, he would have known it, or when information of it is given to, or obtained by, his agent under the circumstances mentioned in the Indian Contract Act, 1872, section 229.

IX of 1872.

30. A female taking property as restricted owner shall be bound, so far as it is possible for her to do so without applying her other property for that purpose,—

Obligations of restricted owner.

(*a*) to preserve the substance of the property without any material alteration, deterioration or diminution except such as may be essential to the realization of the full income of it in a reasonable manner, and to deal with it in all respects as carefully as a person of ordinary prudence would deal with property which he hoped to transmit in good condition to his heirs; and

[Act II of 1882, s. 13.]

(*b*) to make such payments, institute, maintain and defend such suits and other proceedings, and take such other steps as, regard being had to the nature and amount or value of the property, may be reasonably requisite for the assertion and protection of the title thereto, for the protection of the interest of those who are to take it after her, or for the recovery of any portion of it which is not in her possession.

[Bo. Bill, s. 3; "life-estate."]

31. A female taking property as restricted owner shall have power to transfer the same, so that the transfer may have effect beyond her life when, the income being insufficient, such transfer is necessary in order to raise money for any of the following purposes, namely:—

Restricted owner's power of transfer.

(*a*) to discharge any of the obligations imposed by section 30;

(*b*) to discharge the debts of the absolute owner from whom the property descended;

(*c*) to provide for the maintenance of any persons entitled under this Act to have their maintenance provided for out of the property, for the payment of any marriage expenses or funeral expenses payable under this Act out of the property, and for the performance of any ordinary family ceremonies; and

(*d*) to support herself where she has no other sufficient means of support.

[New. Act II of 1882, s. 34.]

32. (*1*) A restricted owner of property may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction to sanction any transfer of that property which she proposes to make under section 31.

Power to apply to Court to sanction a transfer under section 31.

(*2*) The petition must state the names of all the persons interested in the application so far as they can be ascertained, and must be verified by the applicant or by some other competent person in the manner required by law for the verification of 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, that person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code. XLV of 1860.

(*3*) A copy of the petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(*4*) A transfer made with the sanction of a Court obtained under this section shall be deemed to be warranted by section 31.

[New].

33. A Court dealing with an application under section 32 may, if it thinks fit, sanction the transfer proposed subject to the condition that the money raised by the transfer shall be paid into Court or to trustees apppointed by the Court, and may give such further directions as it thinks fit with a view to ensuring that the money shall be applied to the purpose for which it is raised, or that any balance thereof which is not required for that purpose, shall be secured for the benefit of those who would take the property after the restricted owner.

Power to direct money raised to be paid into Court.

34. When property belonging to a female as restricted owner is sold in execution of a decree passed against her, the interest taken by the purchaser shall cease on her death,—

Effect of sale in execution against restricted owner.

except when, without any collusion between her and the plaintiff,—

(*a*) the decree is passed against her as representative of the absolute owner from whom the property descended; or

(*b*) the decree is one for sale passed on a mortgage made under section 31 so as to take effect beyond the life of the female.

35. A decision in any suit or other proceeding, or a compromise of any dispute, relating to the property to which the restricted owner is a party, shall, except where she acts in collusion with the party opposed to her, bind those who take the property after her under this Act in the same manner and to the same extent as if she were an absolute owner of the property.

Effect of decision or compromise to which the restricted owner is a party.

36. In any case in which, under any enactment for the time being in force, an owner of property would by lapse of time lose any right to, over or in respect of that property, or any means of enforcing any such right, or another person would by lapse of time acquire any right to, over or in respect of that property, any period which elapses during the continuance of the restricted ownership shall be reckoned as against those taking the property after the termination of that ownership in the same manner and to the same extent as if the restricted owner had been an absolute

Effect of lapse of time during continuance of restricted ownership.

The Khojá Succession Bill, 1884.

(Chapter VI.—Of Wills of Khojás.—Sections 42-43.)

owner of the property and it had been taken by them as her heirs.

[Bo. Bill, s. 39.]

Further descent of property held by unmarried female as restricted owner.

37. (*1*) When property has descended to a female as restricted owner and she dies unmarried, it shall belong to the person to whom it would then have belonged if she had died before the absolute owner from whom it descended and it had descended under this Act without having been alienated.

(*2*) In default of such person, the property shall descend as if the female were not a restricted owner.

[Bo. Bill, s. 41.]

Further descent of restricted property of married or divorced female or widow.

38. (*1*) When property has descended to a female as restricted owner and she dies, being at the time of her death married, a widow or divorced from her husband, the property shall be divided among her legitimate lineal male descendants, not being more remote than the fourth degree, those nearest in degree of kindred to her excluding the more remote, and, when those nearest in degree are not her sons, the property being so divided amongst them that the sons of any person shall take the share which he would have taken if the fathers of all had survived the restricted owner.

(*2*) In default of legitimate lineal male descendants as aforesaid, the property shall belong to the daughters of the deceased; in default of daughters, the property shall belong to the legitimate lineal male descendants of daughters, not being more remote from the deceased than the fourth degree, those nearest in degree excluding the more remote; the descendants of each daughter, when they take, taking an equal share, and when they are not sons of the daughters, that share being so divided among them that the sons of any person shall take what he would have taken if the fathers of all had survived the restricted owner.

(*3*) In default of legitimate lineal male descendants of daughters as aforesaid, the property shall belong to the person to whom it would then have belonged if the restricted owner had died before the absolute owner from whom it descended, and it had descended under this Act without having been alienated.

(*4*) In default of such person, the property shall descend as if the female were not a restricted owner.

[Bo. Bill, s. 38.]

When female taking property under sections 37 and 38 takes as restricted owner.

39. When property, having descended to a female as restricted owner, subsequently descends to another female under section 37, sub-section (1), or section 38, sub-section (3), that female shall take it as restricted owner.

[Bo. Bill, s. 42.]

Widows taking together as restricted owners to have a right of survivorship.

40. Notwithstanding anything in the foregoing sections, when two or more widows of a deceased Khojá take his property under this Act as restricted owners,—

(1) there shall be as between them a right of survivorship in respect of that property;

(2) the proviso to section 29 shall not apply to any lease of or any right to, over or in respect of the property, or any part or share thereof, granted or created by one or more of them without the consent in writing of the other or others of them then surviving;

(3) section 31 and section 32 shall not apply to any transfer made by one or more of them without the consent in writing of the other or others of them then surviving;

(4) section 35 shall not apply to any decision in any suit or proceeding or to any compromise unless all of them then surviving are parties to that suit, proceeding or compromise.

[Bo. Bill, s. 34; Act XV of 1856, s. 2.]

Effect of re-marriage of widow claiming or holding as restricted owner.

41. Notwithstanding anything in the foregoing sections, a widow marrying again after her husband's death shall not be entitled to take as restricted owner his property or any property of any of his lineal descendants which has descended to them from him; and a widow taking any such property as restricted owner under the foregoing sections and subsequently marrying again shall, for the purpose of applying sections 28, 29, 34, 38 and 40, to that property, be deemed to have died.

CHAPTER VI.

OF WILLS OF KHOJÁS.

[Bo. Bill, ss. 4, 5 & 6.]

Extension of portions of Act X of 1865 with certain modifications to wills of Khojás.

42. Subject to the provisions of this Act, the portions of the Indian Succession Act, 1865, set forth in the schedule hereto annexed, with the modifications shown in that schedule, shall, notwithstanding anything contained in section 331 of that Act, apply to all wills made by a Khojá, whether male or female, dying on or after the first day of January eighteen hundred and eighty-five; and X of 1865.

in the portions of the Act so applying all words defined in section 3 of the Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as that section has attached to them respectively;

Provided that—

(*a*) For the purpose of the portions of the Act so applying, no person to whom the Indian Majority Act, 1875, applies shall be deemed to have attained his majority before the time specified in this behalf in that Act. IX of 1875.

(*b*) A bequest by a Khojá in favour of any person who has not come into existence at the death of the testator, or in favour of a class of persons any one of whom has not come into existence at that time, shall be void.

(*c*) When a bequest is void under clause (*b*), any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest shall also be void.

[Act IV of 1882, s. 10.]

Bequest of property to woman without power to transfer or charge.

43. Notwithstanding anything contained in the foregoing sections, a Khojá may bequeath property to or for the benefit of a woman so that she shall not have power to transfer or charge the same or her beneficial interest therein.

The Khojá Succession Bill, 1884.

(Chapter VII.—Of Maintenance and Marriage and Funeral Expenses.—Secs. 44-47.)

(Chapter VIII.—Miscellaneous.—Sections 48-51.)

CHAPTER VII.

OF MAINTENANCE AND MARRIAGE AND FUNERAL EXPENSES.

[Bo. Bill, ss. 34 & 43.]

Maintenance and funeral expenses payable out of intestate's property.

44. (*1*) The amount requisite for the maintenance of the following persons and the amount of their necessary funeral expenses shall, if they do not possess or leave means sufficient for the purpose, be payable out of any property of a deceased male Khojá in respect of which he has died intestate.

(*2*) The persons referred to are—

(*a*) the widow or widows of the deceased Khojá and the widows of his legitimate lineal male descendants, provided they have not married again;

(*b*) every daughter and sister (whether legitimate or not) of the deceased Khojá, and every legitimate daughter of his son, grandson or great-grandson, except when she has been married and her husband is living;

(*c*) the father, mother, grandfather and grandmother of the deceased Khojá; and

(*d*) his illegitimate sons until they attain their majority.

[Bo. Bill, s. 44.]

Marriage expenses payable out of intestate's property.

45. The expenses of the first or only marriage of every daughter (whether legitimate or not) of a deceased male Khojá, and of every legitimate daughter of his deceased son, grandson or great-grandson, if not otherwise sufficiently provided for, shall be payable out of any of his property in respect of which he has died intestate.

[Bo. Bill, s. 45.]

Maintenance and funeral expenses payable out of property of testator.

46. If a male Khojá dies leaving a legitimate lineal male descendant who has not attained his majority, or a daughter who is unmarried or a widow, and having disposed of his property by will in such a manner as to leave that descendant, daughter or widow without sufficient means for the purpose, the amount requisite for the maintenance, of the descendant during his minority, or of the daughter while she remains unmarried or of the widow until her death or re-marriage (as the case may be) shall be payable out of the testator's property; and if the descendant dies before he attains his majority or the daughter dies unmarried or the widow dies without re-marrying, his or her necessary funeral expenses shall be payable out of that property.

[New.]

Recovery of sums claimable under sections 44, 45 and 46.

47. Any sum claimable for maintenance or marriage expenses or funeral expenses under section 44, section 45 or section 46 out of any property of a deceased male Khojá shall be recoverable as if it was due under a contract made by the Khojá in his lifetime and he had died leaving only that property:

Provided that—

first, the property shall be applied to the payment of debts due by the deceased before being applied to the payment of sums so claimable;

secondly, no decree shall be passed for arrears of any allowance on account of maintenance unless the amount of the allowance has been fixed by agreement or by order of a Court; and

thirdly, when a suit is instituted for the purpose of having any such allowance fixed against a person taking the property by intestate succession, and that person is able and willing to maintain or provide for the maintenance of the person by or on whose behalf the suit is instituted, and gives security to the satisfaction of the Court for his so doing, the Court may, if it thinks fit, dismiss the suit.

CHAPTER VIII.

MISCELLANEOUS.

[Bo. Bill, s. 42. Act X of 1865, s. 28.]

Property when to go to the Crown.

48. When a Khojá dies intestate in respect of any of his property, and there is no person entitled to take that property under the foregoing sections, it shall go to the Crown.

Females succeeding under this Act to take as males, except in certain cases.

49. Except as otherwise provided by this Act—

(*1*) a female taking property by intestate succession under this Act shall have the same interest in it, and the same powers in respect of it, as if she were a male; and

(*2*) a female taking property under any testamentary disposition under this Act shall have the same interest in it, and the same powers in respect of it, as a male taking under a like disposition.

[Bo. Bill, s. 35. Act XV of 1856, s. 3.]

Guardianship of children where widow remarries.

50. If a widow of a deceased Khojá, not having been appointed by his will to be guardian for his children, marries again, she shall not be entitled as of right to be appointed guardian of the children by a Court under any law for the time being in force relating to the appointment of guardians, and, when she has before her remarriage been so appointed, a Court having jurisdiction to appoint a guardian for the children may in its discretion remove her from the guardianship.

Property transferable by gift made in contemplation of death.

51. A Khojá may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

When gift said to be made in contemplation of death.

A gift is said to be made in contemplation of death where a person who is ill and expects to die shortly of his illness delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

Such gift resumable.

Such a gift may be resumed by the giver.

When it fails.

It does not take effect if he recovers from the illness during which it was made, nor if he survives the person to whom it was made.

Illustrations.

(*a.*) A being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death—

a watch:

a bond granted by C to A:

a bank-note:

a promissory note of the Government of India endorsed in blank:

a bill of exchange endorsed in blank:

certain mortgage-deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—

the watch:

the debt secured by C's bond:

the bank-note:

the promissory note of the Government of India:

the bill of exchange:

the money secured by the mortgage-deeds.

(*b.*) A being ill, and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

(*c.*) A being ill and in expectation of death, puts aside certain articles in separate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

SCHEDULE.

(*See Section 42.*)

PORTIONS OF THE INDIAN SUCCESSION ACT (X OF 1865) MODIFIED FOR APPLICATION TO WILLS MADE BY KHOJÁS.

Note.—Modifications are shewn in italics; omissions by asterisks.

PART VII.

Of Wills and Codicils.

Persons capable of making wills.

46. Every person of sound mind and not a minor may dispose of his property by will.

Explanation 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf, or dumb, or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

Illustrations.

(*a.*) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(*b.*) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid will.

(*c.*) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

Testamentary guardian.

47. A father, whatever his age may be, may by will appoint a guardian or guardians for his child during minority.

Will obtained by fraud, coercion or importunity.

48. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Illustrations.

(*a.*) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a will in his, A's, favour; such will has been obtained by fraud and is invalid.

(*b.*) A by fraud and deception prevails upon the testator to bequeath a legacy to him. The bequest is void.

(*c.*) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(*d.*) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(*e.*) A being of sufficient intellect, if undisturbed by the influence of others, to make a will, yet being so much under the control of B that he is not a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(*f.*) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport, and does so merely to purchase peace, and in submission to B. The will is invalid.

(*g.*) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(*h.*) A, with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

Will may be revoked or altered.

49. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

PART VIII.

Of the Execution of Unprivileged Wills.

Execution of unprivileged wills.

50. Every testator, not being a soldier employed in an expedition, or engaged in actual warfare, or a mariner at sea, must execute his will according to the following rules:—

First.—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign *or affix his mark to* the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Incorporation of papers by reference.

51. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

PART IX.

Of Privileged Wills.

Privileged wills.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made as is mentioned in the fifty-third section. Such wills are called privileged wills.

Illustrations.

(*a.*) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(*b.*) A is at sea in a merchant-ship, of which he is the purser. He is a mariner, and being at sea can make a privileged will.

(*c.*) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(*d.*) A, a mariner of a ship in the course of a voyage, is temporarily on shore, while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(*e.*) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(*f.*) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

Mode of making, and rules for executing, privileged wills.

53. Privileged wills may be in writing, or may be made by word of mouth.

The execution of them shall be governed by the following rules:—

First.—The will may be written wholly by the testator, with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will, if it be shown that it was written by the testator's directions, or that he recognized it as his will.

If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed, the instrument shall not by reason of that circumstance be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

Fourth.—If the soldier or mariner shall have written instructions for the preparation of his will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his will.

Fifth.—If the soldier or mariner shall, in the presence of two witnesses, have given verbal instructions for the preparation of his will, and they shall have been reduced into writing in his lifetime, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will.

PART X.

Of the Attestation, Revocation, Alteration and Revival of Wills.

* * * * * * * * *

Witness not disqualified by interest or by being executor.

55. No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

* * * * * * * * *

Revocation of unprivileged will or codicil.

57. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than * * * * * by another will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Illustrations.

(*a.*) A has made an unprivileged will. Afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(*b.*) A has made an unprivileged will. Afterwards, A being entitled to make a privileged will, makes a privileged will which purports to revoke his unprivileged will. This is a revocation.

Effect of obliteration, interlineation or alteration in unprivileged will.

58. No obliteration, interlineation or other alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will

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as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Revocation of privileged will or codicil.

59. A privileged will or codicil may be revoked by the testator, by an unprivileged will or codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation.—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged will.

Revival of unprivileged will.

60. No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same;

Extent of revival of will or codicil partly revoked and afterwards wholly revoked.

and when any will or codicil which shall be partly revoked and afterwards wholly revoked shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

PART XI.

Of the Construction of Wills.

Wording of will.

61. It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

Enquiries to determine questions as to object or subject of will.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court must inquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations.

(*a.*) A, by his will, bequeaths 1,000 rupees to his eldest son or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies.

(*b.*) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(*c.*) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

Misnomer or misdescription of object.

63. Where the words used in the will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(*a.*) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(*b.*) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(*c.*) The testator bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(*d.*) The testator gives his residuary estate to be divided among "his seven children," and proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(*e.*) The testator, having six grand-children, makes a bequest to "his six grand-children," and proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(*f.*) The testator bequeaths "1,000 rupees to each of the three children of A." At the date of the will A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

When words may be supplied.

64. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

Rejection of erroneous particulars in description of subject.

65. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous and the bequest shall take effect.

Illustrations.

(*a.*) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, but had no marsh-lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh-lands of the testator lying in L shall pass by the bequest.

(*b.*) The testator bequeaths to A "his zamíndárí of Rámpúr." He had an estate at Ráupúr, but it was a taluq and not a zamíndárí. The taluq passes by this bequest.

When part of description may not be rejected as erroneous.

66. If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

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Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under the sixty-fifth section are to be considered as struck out of the will.

Illustrations.

(*a.*) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

(*b.*) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X, comprising 1,000 bíghás of land." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

Extrinsic evidence admissible in case of latent ambiguity.

67. Where the words of the will are unambiguous, but it is found by extrinsic evidence that they admit of applications one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Illustrations.

(*a.*) A man, having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(*b.*) A, by his will, leaves to B "his estate called Sultánpur Khurd." It turns out that he had two estates called Sultánpur Khurd. Evidence is admissible to show which estate was intended.

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

68. Where there is an ambiguity or deficiency on the face of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations.

(*a.*) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under the seventy-sixth section.

(*b.*) A bequeaths 1,000 rupees to , leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(*c.*) A bequeaths to B rupees, or "his estate of ." Evidence is not admissible to show what sum or what estate the testator intended to insert.

Meaning of clause to be collected from entire will.

69. The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a codicil is to be considered as part of the will.

Illustrations.

(*a.*) The testator gives to B a specific fund or property at the date of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life [illegible] his decease in B; it appearing from the bequest to [illegible] testator meant to use in a restricted sense the [illegible] describes what he gives to A.

(*b.*) Where a testator, having an estate one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said, "I give Black Acre to B and all the rest of my estate to A."

When words may be understood in restricted sense, and when in sense wider than usual.

70. General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

Illustrations.

(*a.*) A testator gives to A "his farm in the occupation of B," and to C "all his marsh-lands in L." Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in L. The general words, "all his marsh-lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(*b.*) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons and chest of clothes, and to his friend A (a shipmate) his red box, clasp-knife and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(*c.*) A, by his will, bequeathed to B all his household furniture, plate, linen, china, books, pictures and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest, B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

Which of two possible constructions preferred.

71. Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

No part rejected, if it can be reasonably construed.

72. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

Interpretation of words repeated in different parts of will.

73. If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

Testator's intention to be effectuated as far as possible.

74. The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

* * * * * *

The last of two inconsistent clauses prevails.

75. Where two clauses or gifts in a will are irreconcileable, so that they cannot possibly stand together, the last shall prevail.

Illustrations.

(*a.*) The testator by the first clause of his will leaves his estate of Rámnagar "to A," and by the last clause of his will leaves it "to B and not to A." B shall have it.

(*b.*) If a man at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition shall prevail.

76. A will or bequest not expressive of any definite intention is void for uncertainty.

The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

Illustration.

If a testator says—"I bequeath goods to A"; or "I bequeath to A"; or "I leave to A all the goods mentioned in a schedule," and no schedule is found; or "I bequeath 'money,' 'wheat,' 'oil,'" or the like, without saying how much, this is void.

Words describing subject refer to property answering description at testator's death.

77. The description contained in a will, of property the subject of gift, shall, unless a contrary intention appear by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

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Bequest without words of limitation.

82. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.

Bequest in alternative.

83. Where property is bequeathed to a person with a bequest in the alternative to another person or to a class of persons, if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect; but if he be then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations.

(*a.*) A bequest is made to A or to B. A survives the testator. B takes nothing.

(*b.*) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(*c.*) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(*d.*) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(*e.*) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.

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Effect of words describing a class added to bequest to a person.

84. Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

Illustrations.

(*a.*) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors and administators.

In each of these cases, A takes the whole interest which the testator had in the property.

(*b.*) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

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Bequest to class of persons under general description only.

85. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

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Rules of construction where will purports to make two bequests to same person.

88. Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first, if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will:—

First.—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will and again in a codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

Third.—Where two legacies of unequal amount are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word "will" does not include a codicil.

Illustrations.

(*a.*) A having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the will concludes with the words "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal.

(*b.*) A having one diamond-ring, which was given him by B, bequeathed to C the diamond-ring which was given him by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond-ring which was given him by B. C can claim nothing except the diamond-ring which was given to A by B.

(*c.*) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, in the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(*d.*) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(*e.*) A, by his will, bequeaths to B 5,000 rupees, and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(*f.*) A, by one codicil to his will, bequeaths to B 5,000 rupees, and by another codicil, bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(*g.*) A, by his will, bequeaths "500 rupees to P because she was his nurse," and in another part of the will bequeaths 500 rupees to B "because she went to England with his children." B is entitled to receive 1,000 rupees.

(*h.*) A, by his will, bequeaths to B the sum of 5,000 rupees and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(*i.*) A, by his will, bequeaths to B the sum of 5,000 rupees and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and take a contingent interest in another sum of 5,000 rupees.

Constitution of residuary legatee.

89. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

Illustrations.

(*a.*) A makes her will, consisting of several testamentary papers, in one of which are contained the following words:—"I think there will be something left, after all funeral expenses, &c., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(*b.*) A makes his will, with the following passage at the end of it:—"I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure." B is constituted the residuary legatee.

(*c.*) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

Property to which residuary legatee entitled.

90. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

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Time of vesting of legacy in general terms.

91. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and, if he dies without having received it, it shall pass to his representatives.

In what case legacy lapses.

92. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(*a.*) The testator bequeaths to B "500 rupees which B owes him." B dies before the testator; the legacy lapses.

(*b.*) A bequest is made to A and his children. A dies before the testator or happens to be dead when the will is made. The legacy to A and his children lapses.

(*c.*) A legacy is given to A, and in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(*d.*) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator. B survives the testator. The bequest to B takes effect.

(*e.*) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(*f.*) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will laspe.

Legacy does not lapse if one of two joint legatees die before testator.

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

Illustration.

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

Effect of words showing testator's intention to give distinct shares.

94. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Illustration.

A sum of money is bequeathed to A, B and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

When lapsed share goes as undisposed of.

95. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

When bequest to testator's lineal descendant does not lapse on his death in testator's lifetime.

96. Where a bequest shall have been made to any *son or other legitimate lineal male descendant* of the testator, and the legatee shall die in the lifetime of the testator, but any *legitimate* lineal *male* descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Illustration.

A makes his will, by which he bequeaths a sum of money to his son B for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his will whereby he bequeaths all his property to his widow D. The money goes to D.

Bequest to A for benefit of B does not lapse by A's death.

97. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

Survivorship in case of bequest to described class.

98. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

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Illustrations.

(*a.*) A bequeaths 1,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D and E. E died after the date of the will, but for the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(*b.*) A bequeaths a legacy to the children of B. At the time of the testator's death, B has no chidren. The bequest is void.

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PART XII.

OF VOID BEQUESTS.

Bequest to person by particular description, who is not in existence at testator's death.

99. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

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Illustrations.

(*a.*) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator B has no son. The bequest is void.

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The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease.

Rule against perpetuity.

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102. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the last preceding section, such bequest shall be wholly void.

Bequest to a class, some of whom may come under rules in section 101.

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103. Where a bequest is void by reason of any of the rules contained in the *two* last preceding sections, any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void.

Bequest to take effect on failure of bequest void under section 101 or 102.

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104. A direction to accumulate the income arising from any property shall be void; and the property shall be disposed of as if no accumulation had been directed.

Effect of direction for accumulation.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death;

and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(*a.*) The will directs that the sum of 10,000 rupees shall be invested in Government-securities, and the income accumulated for 20 years, and that the principal, together with the accumulations, shall then be divided between A, B and C. A, B and C are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(*b.*) The will directs that 10,000 rupees shall be invested and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(*c.*) The will directs that the rents of the farm of Sultánpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living, named B. B shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

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(*e.*) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the will, but in consequence of B's minority.

PART XIII.

OF THE VESTING OF LEGACIES.

106. Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy.

Date of vesting of legacy when payment or possession postponed.

And in such cases the legacy is from the testator's death said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Illustrations.

(*a.*) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(*b.*) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(*c.*) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(*d.*) A fund is bequeathed to A until B attains the age of 18, and then to B. The legacy to B is vested in interest from the testator's death.

(*e.*) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(*f.*) A fund is bequeathed to A, B and C in equal shares, to be paid to them on their attaining the age of 18 respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B and C, subject to be devested in case A, B and C shall all die under 18, and upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

107. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

Date of vesting when legacy contingent upon specified uncertain event.

A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Illustrations.

(*a.*) A legacy is bequeathed to D in case A, B and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B and C all die under 18, or one of them attains that age.

(*b.*) A sum of money is bequeathed to A "in case he shall attain the age of 18," or, "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(*c.*) An estate is bequeathed to A for life, and after his death to B, if B shall then be living; but if B shall not be then living, to C. A, B and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or the other has happened.

The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

(*d.*) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(*e.*) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that, if she shall not attain 18, or marry under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy, although she may have married under 18 without the consent of B.

(*f.*) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfiled by A's marrying.

(*g.*) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of Insolvent Debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(*h.*) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(*i.*) A leaves his farm of Sultánpur Khurd to B, if B shall convey his own farm of Sultánpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(*j.*) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent, until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence, within that period, of an event which makes the fulfilment of the condition impossible.

(*k.*) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(*l.*) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(*m.*) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

108. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Vesting of interest in bequest to such members of a class as shall have attained particular age.

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PART XIV.

OF ONEROUS BEQUESTS.

109. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Onerous bequest.

Illustration.

A having shares in (X), a prosperous joint stock company, and also shares in (Y), a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

110. Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

One of two separate and independent bequests to same person may be accepted, and other refused.

Illustration.

A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not by this refusal forfeit the money.

PART XV.

OF CONTINGENT BEQUESTS.

111. Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable.

Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.

Illustrations.

(*a.*) A legacy is bequeathed to A, and in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(*b.*) A legacy is bequeathed to A, and in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

(*c.*) A legacy is bequeathed to A when and if he attains the age of 18, and in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(*d.*) A legacy is bequeathed to A for life and after his death to B, and, "in case of B's death without children," to C. The words "in case of B's death without children" are to be understood as meaning in case B shall die without children during the lifetime of A.

(*e.*) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A."

112. Where a bequest is made to such of certain persons as shall be surviving at some period but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the will.

Bequest to such of certain persons as shall be surviving at some period not specified.

Illustrations.

(*a.*) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(*b.*) Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

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(*d.*) Property is bequeathed to A for life, and after his death to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

PART XVI.

OF CONDITIONAL BEQUESTS.

113. A bequest upon an impossible condition is void.

Bequest upon impossible condition.

Illustrations.

(*a.*) An estate is bequeathed to A on condition that he shall walk one hundred miles in an hour. The bequest is void.

(*b.*) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

The Khojá Succession Bill, 1884.

(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

114. A bequest upon a condition the fulfilment of which would be contrary to law or to morality is void.

Bequest upon illegal or immoral condition.

Illustrations.

(*a.*) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(*b.*) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

115. Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Fulfilment of condition precedent to vesting of legacy.

Illustrations.

(*a.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(*b.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(*c.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

(*d.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(*e.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(*f.*) A makes his will, whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(*g.*) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

116. Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Bequest to A and on failure of prior bequest, to B.

Illustrations.

(*a.*) A bequeaths a sum of money to his own children surviving him, and if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(*b.*) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

117. Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

When second bequest not to take effect on failure of first.

Illustration.

A makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

118. A bequest may be made to any person with the condition superadded that in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or, that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.

Bequest over, conditional upon happening or not happening of specified uncertain event.

In each case the ulterior bequest is subject to the rules contained in sections 107, 108, 109, 110, 111, 112, 113, 114, 116, 117.

Illustrations.

(*a.*) A sum of money is bequeathed to A, to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be devested and to go to B in case A shall die under 18.

(*b.*) An estate is bequeathed to A with a proviso that, if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

* * * * *

(*d.*) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survior living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money and the representative of B takes the other half.

(*e.*) A bequeaths to B the interest of a fund for life, and directs the fund to be divided, at her death, equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

119. An ulterior bequest of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Condition must be strictly fulfilled.

Illustrations.

(*a.*) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(*b.*) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(*c.*) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that, if A dies under 18, or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

120. If the ulterior bequest be not valid, the original bequest is not affected by it.

Original bequest not affected by invalidity of second.

Illustrations.

(*a.*) An estate is bequeathed to A for his life, with a condition superadded that if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will.

(*b.*) An estate is bequeathed to A for her life, and if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(*c.*) An estate is bequeathed to A for life, and if she marries, to the eldest son of B for life. B [illegible]

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the testator's death, had not had a son. The bequest over is void under section 92, and A is entitled to the estate during his life.

121. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.

Illustrations.

(*a.*) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood; he loses his life-interest in the estate.

(*b.*) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(*c.*) An estate is bequeathed to A, provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(*d.*) An estate is bequeathed to A, with a proviso that, if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(*e.*) A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

122. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the one hundred and seventh section.

Such condition must not be invalid under section 107.

123. Where a bequest is made with a condition superadded that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect, but no time is specified for the performance of the act, if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Result of legatee rendering impossible or indefinitely postponing act for which no time specified and on non-performance of which subject-matter to go over.

Illustrations.

(*a.*) A bequest is made to A with a proviso that, unless he enters the army, the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(*b.*) A bequest is made to A with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

124. 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 shall be requisite to make up for the delay caused by such fraud.

Performance of condition, precedent or subsequent, within specified time.

Further time in case of fraud.

PART XVII.

Of Bequests with directions as to application or enjoyment.

125. Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Direction that funds be employed in particular manner following absolute bequest of same to or for benefit of any person.

Illustration.

A sum of money is bequeathed towards purchasing a country-residence for A, or to purchase an annuity for A, or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

126. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.

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127. Where a testator does not absolutely bequeath a fund so as to sever it from his own estate, but gives it for certain purposes and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Bequest of fund for certain purposes, some of which cannot be fulfilled.

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PART XVIII.

Of Bequests to an Executor.

128. If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will or otherwise manifests an intention to act as executor.

Legatee named as executor cannot take unless he shews intention to act as executor.

Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.

PART XIX.

Of Specific Legacies.

129. Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Specific legacy defined.

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(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

Illustrations.

(*a.*) A bequeaths to B—

"the diamond-ring presented to him by C:"

"his gold chain:"

"a certain bale of wool:"

"a certain piece of cloth:"

"all his household-goods, which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death:"

"the sum of 1,000 rupees in a certain chest:"

"the debt which B owes him:"

"all his bills, bonds and securities belonging to him lying in his lodgings in Calcutta:"

"all his furniture in his house in Calcutta:"

"all his goods on board a certain ship then lying in the river Hughly:"

"2,000 rupees which he has in the hands of C:"

"the money due to him on the bond of D:"

"his mortgage on the Rámpur factory:"

"one-half of the money owing to him on his mortgage of Rámpur factory:"

"1,000 rupees being part of a debt due to him from C:"

"his capital stock of 1,000*l.* in East India stock:"

"his promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan:"

"all such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company:"

"all the wine which he may have in his cellar at the time of his death:"

"such of his horses as B may select:"

"all his shares in the Bank of Bengal:"

"all the shares in the Bank of Bengal which he may possess at the time of his death:"

"all the money which he has in the 5½ per cent. loan of the Government of India:"

"all the Government-securities he shall be entitled to at the time of his decease."

Each of these legacies is specific.

(*b*) A having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B.

The legacy is specific.

(*c.*) A having property at Benares, and also in other places, bequeaths to B all his property at Benares.

The legacy is specific.

(*d.*) A bequeaths to B—

his house in Calcutta:

his zamíndárí of Rámpur:

his taluq of Rámnagar:

his lease of the indigo-factory of Salkya:

an annuity of 500 rupees out of the rents of his zamíndárí of W.

A directs his zamíndárí of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

(*e.*) A by his will charges his zamíndárí of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamíndárí to D. Each of these bequests is specific.

(*f.*) A bequeaths a sum of money—

to buy a house in Calcutta for B:

to buy an estate in zila Faridpur for B:

to buy a diamond-ring for B:

to buy a horse for B:

to be invested in shares in the Bank of Bengal for B:

to be invested in Government-securities for B.

A bequeaths to B—

"a diamond-ring:"

"a horse:"

"10,000 rupees worth of Government securities:"

"an annuity of 500 rupees:"

"2,000 rupees, to be paid in cash:"

"so much money as will produce 5,000 rupees 4 per cent. Government-securities."

These bequests are not specific.

(*g.*) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England.

No one of these legacies is specific.

130. Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds or securities in which it is invested are described in the will.

Bequest of sum certain where stocks, &c., in which invested are described.

Illustration.

A bequeaths to B—

"10,000 rupees of his funded property:"

"10,000 rupees of his property now invested in shares of the East Indian Railway Company:"

"10,000 rupees at present secured by mortgage of Rámpur factory."

No one of these legacies is specific.

131. Where a bequest is made in general terms of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.

Illustration.

A bequeaths to B 5,000 rupees 5 per cent. Government securities. A had at the date of the will five per cent. Government securities for 5,000 rupees.

The legacy is not specific.

132. A money-legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Bequest of money where not payable until part of testator's property disposed of in certain way.

Illustrations.

A bequeaths to B 10,000 rupees, and directs that this legacy shall be paid as soon as A's property in India shall be realized in England.

The legacy is not specific.

133. Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

When enumerated articles not deemed specifically bequeathed.

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136. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

The Khojá Succession Bill, 1884.

(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

PART XX.

Of Demonstrative Legacies.

137. Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Demonstrative legacy defined.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that—

where specified property is given to the legatee, the legacy is specific;

where the legacy is directed to be paid out of specified property, it is demonstrative.

Illustrations.

(*a.*) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific; the legacy to C is demonstrative.

(*b.*) A bequeaths to B—

"ten bushels of the corn which shall grow in his field of Greenacre:"

"80 chests of the indigo which shall be made at his factory of Rámpur:"

"10,000 rupees out of his five per cent. promissory notes of the Government of India:"

an annuity of 500 rupees "from his funded property:"

"1,000 rupees out of the sum of 2,000 rupees due to him by C."

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his taluq of Rámnagar.

A bequeaths to B—

"10,000 rupees out of his estate at Rámnagar," or charges it on his estate at Rámnagar:

"10,000 rupees, being his share of the capital embarked in a certain business."

Each of these bequests is demonstrative.

138. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

Illustration.

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

PART XXI.

Of Ademption of Legacies.

139. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the will.

Ademption explained.

Illustrations.

(*a.*) A bequeaths to B—

"the diamond-ring presented to him by C:"

"his gold chain:"

"a certain bale of wool:"

"a certain piece of cloth:"

"all his household-goods which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death."

A, in his lifetime,

sells or gives away the ring;
converts the chain into a cup:
converts the wool into cloth:
makes the cloth into a garment:

takes another house into which he removes all his goods

Each of these legacies is adeemed.

(*b.*) A bequeaths to B—

"the sum of 1,000 rupees in a certain chest:"

"all the horses in his stable."

At the death of A, no money is found in the chest, and no horses in the stable.

The legacies are adeemed.

(*c.*) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned.

The legacy is adeemed.

140. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall in such case be paid out of the general assets of the testator.

Non-ademption of demonstrative legacy.

141. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Ademption of specific bequest of right to receive something from third party.

Illustrations.

(*a.*) A bequeaths to B—

"the debt which C owes him:"

"2,000 rupees which he has in the hands of D:"

"the money due to him on the bond of E:"

"his mortgage on the Rámpur factory."

All these debts are extinguished in A's lifetime, some with and some without his consent.

All the legacies are adeemed.

(*b.*) A bequeaths to B—

"his interest in certain policies of life-assurance."

A in his lifetime receives the amount of the policies. The legacy is adeemed.

142. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum received.

Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.

Illustration.

A bequeaths to B "the debt due to him by C." The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

143. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the

Ademption *pro tanto* by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.

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tent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Illustration.

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and testator having received portion of that fund, remainder insufficient to pay both legacies.

144. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee, if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

Ademption where stock, specifically bequeathed, does not exist at testator's death.

145. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

Illustration.

A bequeaths to B—

"his capital stock of 1,000*l.* in East India Stock:"

"his promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan."

A sells the stock and the notes.

The legacies are adeemed.

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

146. Where stock which has been specifically bequeathed does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration.

A bequeaths to B—

"his 10,000 rupees in the 5½ per cent. loan of the Government of India."

A sells one-half of his 10,000 rupees in the loan in question.

One-half of the legacy is adeemed.

Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.

147. A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud or without the knowledge or sanction of the testator.

Illustrations.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A dies before they are brought back.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

When removal of thing bequeathed does not constitute ademption.

148. The removal of the thing bequeathed from the place in which it is stated in the will to be situated does not constitute an ademption where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations.

A bequeaths to B all the bills, bonds and other securities for money belonging to him then lying in his lodgings in Calcutta. At the time of his death these effects had been removed from his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the river Hugli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

When thing bequeathed is a valuable to be received by testator from third person, and testator himself, or his representative, receives it.

149. Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption;

but if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C and sets it apart from the general mass of his property. The legacy is not adeemed.

Change by operation of law of subject of specific bequest between date of will and testator's death.

150. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent. loan of the Government of India."

The securities for the 5½ per cent. loan are converted during A's lifetime into 5 per cent. stock.

A's bequeaths to B the sum of 2,000*l.*, invested in consols in the names of trustees for A.

The sum of 2,000*l.* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India which he has power under his marriage-settlement to dispose of by will. Afterwards in A's lifetime, the fund is converted into consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

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Change of subject without testator's knowledge.

151. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration.

A bequeaths to B "all his 3 per cent. consols." The consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India stock. This legacy is not adeemed.

Stock specifically bequeathed, lent to third party on condition that it be replaced.

152. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

Stock specifically bequeathed, sold but replaced and belonging to testator at his death.

153. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

PART XXII.

Of the Payment of Liabilities in respect of the subject of a Bequest.

Non-liability of executor to exonerate specific legatees.

154. Where property specifically bequeathed is subject at the death of the testator to any pledge, lien or incumbrance, created by the testator himself or by any person under whom he claims, then, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

Illustrations.

(*a.*) A bequeaths to B the diamond-ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(*b.*) A bequeaths to B a zamíndárí which at A's death is subject to a mortgage for 10,000 rupees, and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed to be at cost of his estate.

155. Where anything is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations.

(*a.*) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

(*b.*) A having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

Exoneration of legatee's immoveable property for which land-revenue or rent-payable periodically.

156. Where there is a bequest of any interest in immoveable property, in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Illustration.

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

Exoneration of specific legatee's stock in joint stock company.

157. In the absence of any direction in the will where there is a specific bequest of stock in a joint stock company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate;

but if any call or other payment shall, after the testator's death become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest.

Illustrations.

(*a.*) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(*b.*) A has agreed to take 50 shares in an intended joint stock company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(*c.*) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(*d.*) A bequeaths to B his shares in a joint stock company. B accepts the bequest. Afterwards the affairs of the company are wound up and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(*e.*) A is the owner of ten shares in a railway company. At a meeting held during his lifetime a call is made of 3*l.* per share payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

PART XXIII.

Of Bequests of Things described in general terms.

Bequest of thing described in general terms.

158. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Illustrations.

(*a.*) A bequeaths to B a pair of carriage-horses, or a diamond-ring. The executor must provide the legatee with such articles, if the state of the assets will allow it.

The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

(*b.*) A bequeaths to B "*his* pair of carriage-horses." A had no carriage-horses at the time of his death. The legacy fails.

PART XXIV.

Of Bequests of the Interest or Produce of a Fund.

159. Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Bequest of interest or produce of fund.

Illustrations.

(*a.*) A bequeaths to B the interest of his five per cent. promissory notes of the Government of India. There is no other clause in the will affecting those securities. B is entitled to A's five per cent. promissory notes of the Government of India.

(*b.*) A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life and C is entitled to the notes upon B's death.

(*c.*) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

PART XXV.

Of Bequests of Annuities.

160. Where an annuity is created by will, the legatee is entitled to receive it for his life only unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Annuity created by will payable for life only, unless contrary intention appears by will.

Illustrations.

(*a.*) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(*b.*) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(*c.*) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

161. Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him or to receive the money appropriated for that purpose by the will.

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally or where money bequeathed to be invested in purchase of annuity.

Illustrations.

(*a.*) A by his will directs that his executors shall out of his property purchase an annuity of 1,000 rupees for B. B is entitled at his option to have an annuity of 1,600 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(*b.*) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B and C survive the testators. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

162. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

Abatement of annuity.

163. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

Where gift of annuity and residuary gift, whole annuity to be first satisfied.

PART XXVI.

Of Legacies to Creditors and Portioners.

164. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

Creditor *primâ facie* entitled to legacy as well as debt.

165. Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as as well as the portion.

Child *primâ facie* entitled to legacy as well as portion.

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

166. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

No ademption by subsequent provision for legatee.

Illustrations.

(*a.*) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(*b.*) A bequeaths 40,000 rupees to B, his orphan-niece, whom he had brought up from her infancy. Afterwards on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVII.

Of Election.

167. Where a man, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it; and in the latter case he shall give up any benefits which may have been provided for him by the will.

Circumstances in which election takes place.

168. The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

Devolution of interest relinquished by owner.

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(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Testator's belief as to his ownership immaterial.

Illustrations.

(*a.*) The farm of Sultánpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultánpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(*b.*) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(*c.*) A bequeaths to B 1,000 rupees, and to C an estate which will, under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(*d.*) A, a person of the age of 18 domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and, subject thereto, devises and bequeaths to B "all his property, whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Bequest for man's benefit how regarded for purpose of election.

Illustration.

The farm of Sultánpur Khurd being the property of B, A bequeathed it to C, and bequeathed another farm called Sultánpur Buzurg to his own executors, with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultánpur Khurd in opposition to it.

171. A person taking no benefit directly under the will, but deriving a benefit under it indirectly, is not put to his election.

Person deriving benefit indirectly not put to election.

Illustration.

The lands of Sultánpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultánpur to B, and 1,000 rupees to C. C dies intestate shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultánpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultánpur in opposition to the will.

172. A person who in his individual capacity takes a benefit under the will may in another character elect to take in opposition to the will.

Person taking in individual capacity under will may in other character elect to take in opposition.

Illustration.

The estate of Sultánpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultánpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultánpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

Exception to the six last Rules.—Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee, which is also disposed of by the will, if the legatee elects to take the thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Illustration.

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultánpur during her life.

A by his will bequeaths to his wife an annuity of 200*l.* during her life, in lieu of her interest in the estate of Sultánpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l.* The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l.*

173. Acceptance of a benefit given by the will constitutes an election by the legatee to take under the will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

When acceptance of benefit given by will constitutes election to take under will.

Illustrations.

(*a.*) A is owner of an estate called Sultánpur Khurd, and has a life-interest in another estate called Sultánpur Buzurg, to which, upon his death, his son B will be absolutely entitled. The will of A gives the estate of Sultánpur Khurd to B, and the estate of Sultánpur Buzurg to C. B, in ignorance of his own right to the estate of Sultánpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultánpur Khurd. B has not confirmed the bequest of Sultánpur Buzurg to C.

(*b.*) B, the eldest son of A, is the possessor of an estate called Sultánpur. A bequeaths Sultánpur to C, and to B the residue of A's property. B, having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultánpur. He afterwards discovers that the residue does not amount to more than 600 rupees. B has not confirmed the bequest of the estate of Sultánpur to C.

174. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

Presumption arising from enjoyment by legatee for two years.

175. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Confirmation of bequest by act of legatee.

Illustration.

A bequeaths to B an estate to which C is entitled and to C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election;

When testator's representatives may call upon legatee to elect.

and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

Effect of non-compliance.

177. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some person entitled [illegible]

Postponement of election in case of disability.

STATEMENT OF OBJECTS AND REASONS.

THE Khojás are members of a sect which was originally Hindu but was converted to Muhammadanism about 400 years ago. They still, however, as has been more than once held by the highest Court in the Bombay Presidency, retain their former law to such an extent in matters connected with property and succession that it is to be presumed to apply to them until the contrary is shown. This state of things has at times given rise to great difficulties in litigation between Khojás.

2. In the case of *Hirbai* v. *Gorbai*, 12 Bom. High Court Rep. 294, which appears to have occupied the Lower Court for twenty-four sitting days and the Appellate Court for four days, Sir Michael Westropp, C. J., after describing the state of the law, observed as follows:—

"It is, however, evident that the Khojás are not as firmly bound in matters of succession and inheritance by the Hindu law as Muhammadans proper are by the Muhammadan law and the Hindus by the Hindu law, and hence it is that it would not be reasonable to require such stringent proof of a custom of inheritance amongst them differing from ordinary Hindu law as from a Hindu.

"Now, it is manifest that such a state of the law must greatly encourage litigation, and we cannot help thinking that it would be most desirable that the Government should take steps, as was done in the case of the Pársís, to ascertain the views of the majority of the community on the subject of succession, and should then pass an enactment giving effect to those views. Unanimity, of course, could not be expected, but the rules which were found generally to prevail might be made law; and though the religious differences existing among members of the Khojá caste might create some difficulty, it would not, we think, be insuperable."

3. The Government of Bombay, acting upon this suggestion, appointed about the end of the year 1878 a Commission consisting of four gentlemen taken from the Shia division of the Khojás, which acknowledged His Highness the late Aghá Khán as its spiritual superior, one taken from the Sunni division, and Mr. Spencer, Acting First Judge of the Court of Small Causes, with the Hon'ble Mr. Justice Melvill, of the Bombay High Court, as president.

The Commission took the greatest pains to inform themselves of the customs and views of both divisions of the Khojá sect in the Presidency of Bombay and elsewhere, and after much consideration and discussion agreed upon a draft Bill, subject to a dissent on a few specific points which was signed by His Highness Aghá Alí Sháh, son of His Highness the late Aghá Khán, and Mr. Dhurrumsey Poonjabhoy but not by Mr. Jairajbhoy Peerboy and Mr. Rahimtula Syanee, the two other Shia members of the Commission. That draft, having been submitted to the Government of Bombay by the president on the 23rd of December, 1879, and approved of by that Government, was forwarded to the Government of India, and forms the basis of the present Bill.

4. It will be convenient to refer to the provisions of the present Bill as nearly as possible in their order, noticing in their proper place the few points in regard to which His Highness Aghá Alí Sháh and Mr. Dhurrumsey Poonjabhoy differed from the majority of the Commission, and the points of substantive importance in which the present Bill deviates from the draft framed by the Commission.

5. The first provision calling for notice is section 2, which defines the application of the Act—a matter which was not clearly provided for in the Bill prepared by the Commission. The main enactment of the section is that succession to the property, whether moveable or immoveable, in British India of a Khojá dying on or after the first day of January, 1885, shall be regulated by the rules contained in the Act wherever he may have had his domicile at the time of his death. So far as regards immoveable property, this provision coincides with section 5 of the Indian Succession Act, but, as regards moveable property, it involves an important deviation from that section, inasmuch as it applies the Act to all successions to such property though the deceased person may have been domiciled outside British India at the time of his death.

As the rule, which makes the law of the domicile of a deceased person regulate the succession to his moveable property, is not merely the rule of the Indian Succession Act but has obtained very general acceptance elsewhere, it seems desirable to state the reasons which have led the Government of India to think that it is not suitable to the Khojá community.

6. The choice as regards succession to moveable property appears to lie between the law of the domicile of the deceased and the law of the *situs* of the assets. The objections urged against the latter in Western countries are chiefly that a man's moveables are apt to be scattered over many jurisdictions each having a readily ascertainable law of its own, and that accordingly, if the law of the *situs* is made applicable to them, his estate will be broken up into many fragments, all governed by different laws; that a man's moveables may change their place; that the most important class of them, goods employed in commerce, are constantly changing their place; and that accordingly, if the law of the *situs* is applied, it will be impossible for him to foresee the particular law under which they will fall upon his death; and lastly, that the rule of the law of the *situs* does not clearly provide for that portion of the assets which consists of debts or other obligations existing in favour of the deceased. To avoid these difficulties it has been

generally agreed to adopt the law of the domicile of the deceased for the whole of his moveable estate. Various attempts have been made to rest this rule on some *á priori* principle; but it would seem to have had its actual origin in mere considerations of convenience.

7. Looking to the arguments by which it is supported, and to the peculiar circumstances of the Khojá community, it is questionable, to say the least, whether such a rule would meet the requirements of their case. The places beyond the limits of British India, as, for example, Kutch, the Persian Gulf and Zanzibar, in which any considerable number of Khojás is to be found have no law such as can properly be called a territorial law of succession. The tribunals in such places, in so far as they make any rational attempt to apply a law at all, would apply the personal law of the parties, and that in the case of Khojás is *ex hypothesi* altogether unsettled and unascertainable. There is thus in the case of Khojás domiciled out of British India practically speaking no law of the *situs* of the foreign assets to conflict with the law which would apply to the British Indian assets, and no law of the domicile to which recourse could be had; and, therefore, to give the law of the domicile a preference over the Indian law would be simply to substitute a congeries of indefinite and half-established customs for a law, to the application of which there could be no reasonable objection.

It may be added that, in the absence of a law of the domicile, the case is very analogous to those cases in which it is impossible to fix the domicile of the deceased, and the solution which Lord Alvanley appears to have suggested in a case of this latter class was to fall back, as is proposed in this case, on the law of the *situs* of the property; in other words, to put moveables on the same footing as immoveables.

8. If this solution is adopted, and the Indian law is applied to all moveables left by a deceased Khojá in British India, without regard to his domicile, and if, moreover, the same rule is applied, as it naturally would be, in cases arising in Consular jurisdictions in the Persian Gulf, Zanzibar and elsewhere, this further advantage will probably in time be gained, that the law in British India will come to be adopted as a personal law applicable to Khojás in all foreign States in this part of the world.

9. The above remarks apply equally to intestate and to testamentary succession. A question might indeed be raised as to whether a testamentary disposition made beyond the limits of British India should as regards its form be made absolutely subject to British Indian law; but, seeing that the effect of taking any other course would certainly be to admit oral dispositions, it seems clear that the risk of failures of justice will be on the whole less by subjecting completely to our law all dispositions, wherever made, of moveable property in British India.

10. In connection with the definitions it is convenient to notice one of the few important questions on which any difference of opinion has arisen, namely, the question as to the status to be assigned to a woman who is not a Khojá but who is legally married to a Khojá according to the rules of the Muhammadan law, and to her children by him.

The Khojás of the Sunni Jamát, though apparently unwilling to go so far as to recognize any other than a Khojá widow as entitled to inherit from her husband, proposed that the sons of a Khojá by a wife who is not a Khojá should have some share in the inheritance. To this the Khojás of the Shia Jamát would not agree, and the Commission ultimately adopted as a compromise the plan of assigning to the offspring of the marriages in question a status nominally intermediate between those of legitimacy and illegitimacy and giving them in the definition-clauses the designation of "alien sons", but allowing them nothing more than illegitimate sons in the later sections of their Bill. It is stated that the Khojás as a rule are very exclusive and rarely take wives from outside their own community, and so long as this state of things continues the mode in which this point is dealt with is not of great practical moment; but there is an important principle involved, against which even the compromise adopted by the Commission appears to the Government of India to offend. The exclusion of the non-Khojá wife from inheritance and the degradation of her sons to a position altogether lower than that of the legitimate son involves a view as to restrictions on marriage which, even though it may have obtained acceptance with a majority of the Khojá sect, and though the Government has no desire to interfere with it, it is manifestly undesirable to have affirmed by the legislature. The present Bill will accordingly be found to contain no reference either in its definition-clauses or elsewhere to the so-called "alien son." It defines "son," to be a legitimate son and leaves "widow" undefined, and then proceeds to declare the rights of sons and widows, trusting to the Courts to decide, as they will on principles lying outside the law of succession, who are legally entitled to the status of sons and widows.

11. Chapter II of the Bill deals with "succession to the undivided property of a male Khojá dying intestate," and in the previous chapter "undivided property" has been defined as meaning "a share in property belonging to an undivided family." The Bill prepared by the Commission purported to define the phrase "undivided family," but the definition proposed has on inquiry been found to be unsafe. The undivided family among the Khojás appears to come into existence chiefly in connection with trade, and would seem to be an institution of a peculiar nature, somewhat resembling the undivided family among the Hindus; but, on the other hand, it is clear, from the rules laid down in certain sections of the Bill prepared by the Commission, and from the papers submitted with that Bill, that it differs in important respects from the Hindu undivided family. What exactly it is, and when property is to be regarded as its undivided property, it is difficult to ascertain from the papers before the

Government of India; but, judging from the analogous case in Hindu law, it would seem that these are matters which it would be almost hopeless to attempt to define in an Act of the legislature; nor does it appear to be necessary to define them in a Succession Act. It may well be assumed that a fundamental distinction which goes to the root of the family constitution, and which is not confined in its operation to matters of succession, but applies also *inter vivos*, is established outside this Bill. For these reasons, it has been thought best to make no attempt to define "undivided family" or "undivided property" in the present Bill.

12. It will be observed, on comparing Chapters II and III, that the only peculiarity connected with the intestate succession to undivided property is (section 6) that, in default of legitimate lineal male descendants of the intestate within the fourth degree, the property is equally divided among all the male members of the undivided family living at his death.

13. Chapter III of the Bill treats of "succession to the separate property of a male Khojá dying intestate," and the order of succession marked out in sections 7 to 20 will be found to be based on that of the Hindu law.

The subjoined statement has been prepared by the Hon'ble Mr. Melvill, the President of the Commission, with a view to shewing at a glance the extent to which the two differ—

Order of succession according to Hindu law.	*Order of succession for Khojás proposed by the Bill.*
1. Sons.	1. Sons.
2. Grandsons.	2. Grandsons.
3. Great-grandsons.	3. Great-grandsons.
4. Widow.	4. Great-great-grandsons.
5. Daughters.	5. Father.
6. Daughters' sons.	6. Mother.
7. Mother.	7. Widow.
8. Father.	8. Daughters.
9. Brothers.	9. Daughters' sons. }
10. Half-brothers.	10. Brothers. }
11. Brothers' sons.	11. Sons' daughters.
12. Half-brothers' sons.	12. Brothers' sons.
13. Grandmother.	13. Half-brothers.
14. Sister (under the Mayukha).	14. Half-brothers' sons.
15. Grandfather.	15. Grandfather.
16. More distant relatives.	16. Grandmother.
	17. Paternal uncle.
	18. Sister.
	19. More distant relatives.

"It will be seen," Mr. Melvill observes, "that the only very noticeable point of difference is that among the Khojás the father and mother are elevated to a rank in the order of succession superior to that of the widow. This precedence of the mother has been judicially settled in the case of *Hirbai* v. *Gorbai**, already referred to; and although the Khojá members of the Commission were not unanimously in favour of the view taken in that case, they all agreed that, having once been judicially determined, the rule should not be disturbed."

* Reported 12 Bom. H. C. Rep., 294.

14. Section 20 of the present Bill differs in one important particular from the corresponding section (29) of the Bill prepared by the Commission.

The latter admitted to the succession only those of the "more distant relatives" of the intestate who were on the father's side, and confined it to such of them as are within the seventh degree of kindred. On failure of this limited class of distant kindred, section 42 gave the property "to the Jamát of that sect of the Khojás to which the intestate belonged at the time of his death, to be held and applied according to the customs of the said Jamát." Even this did not satisfy the two dissenting members of the Commission and some of the other adherents of His Highness the late Aghá Khán, who, as Imám, was the person chiefly interested in the succession of the Jamát. They contended that the Jamát should come in immediately after the nearer relations.

The Government of India, after fully considering this point in communication with the local authorities, have come to the conclusion that it is impossible to exclude the heirs of a deceased person in favour of any such institution as a "Jamát," or any person or authority representing such an institution. It is open to any Khojá who desires that his property should be devoted to any charitable or religious purpose, or should be enjoyed by any spiritual person for whom he entertains a special veneration, to dispose of his property by will or otherwise in accordance with law, but, if he dies intestate, it would be contrary to all established principles to enact that his property should devolve otherwise than upon his relatives.

15. Apart from this fundamental objection in point of principle, there appear to be practical objections to the proposal as formulated by the Commission. The Jamát is said to be an assembly in council of all the adult male members of the Khojá community of the place, and it is not unlikely that doubts would arise, in connection with matters of religious belief, residence, attendance at the Jamát, and so forth, as to the particular Jamát (if any) to which the deceased person belonged. Similar doubts might also arise as to who were the other persons actually belonging to the Jamát to which the deceased belonged, so as to take the property. There might further be doubts as to how the property of a deceased intestate Khojá is to be held,

and the objects to which it is to be applied. It is true that the section proposed by the Commission says that the property is to be held and applied "according to the customs of the said Jamát." But from a judgment of Sir J. Arnould in the case marginally noted, it would appear that there are no customs to look to. Though a Jamát collects large sums of money through its officers, it only does so on behalf of the Imám; the money collected is passed on to him; and if the Jamát wants any portion of it, even for the expenses of its Jamát-kháná (the council-hall or guildhall of the community), it can procure it only as a grant from the Imám. It appears to be absolutely in the discretion of the Imám to spend the money as he pleases, and as a matter of fact he spends a large portion of it, or at least is said by Sir J. Arnould to have done so at the time the judgment was delivered, on his own private purposes. Indeed, in a set of draft rules of succession for Shia Khojás submitted by His Highness Aghá Alí Sháh the succession of the Jamát is treated as the same thing with the succession of the Imám. The Jamát, therefore, does not seem to have any property or control over property, and it is not clear how there can be any custom governing the application of property by it. It has been argued that no such difficulties as those suggested ordinarily arise at present, but it would be clearly impossible to put the succession of the Jamát on a legislative basis without defining its conditions and incidents, and it would be equally impossible to place the property at the absolute disposal of any individual in whatever degree of veneration he might be held.

Dayá Muhammad and others versus *H. H. Aghá Khán and others* (page 323 of the Bombay High Court Reports, Vol. XII).

16. For these reasons section 20 of the present Bill extends the succession to relatives of the intestate both on the father's and on the mother's side without limit of degree, and it may be added that section 48 applies the ordinary rule, which makes the Crown the ultimate heir, in the rare case in which an owner of property may die intestate and leave no person entitled to succeed under the previous sections.

17. Section 21 is one of the leading sections of the Bill. It provides in effect that, when a female inherits under any of the foregoing sections, she shall, if certain near male relatives are living and are thus postponed to her, take the property only as "restricted owner"—a position to be presently explained at length. With this section should be read section 49, from which it will be seen that in other cases she takes the same interest in the property and has the same powers in respect of it as if she were a male.

18. Chapter IV treats of succession to the absolute property of a female Khojá dying intestate, that is to say, the succession to such of her property as belongs to her otherwise than as restricted owner. The provisions of this chapter call for no remark. Mr. Melvill states that they differ from the Hindu law but that they are approved by all classes of the Khojás, and are not, he thinks, open to any objection. The particulars in which they deviate from the Hindu law or the reasons for the deviations are not explained. They have been accepted by the Government of India as settled by the Commission, such details only being filled in after consultation with the local authorities as seemed necessary to give effect to what is understood to be the intention of those who framed them.

19. Chapter V, which treats of "property which a female takes as restricted owner and the further succession to the same," calls for more detailed notice.

It applies not only in the ordinary case of property taken by a female as restricted owner under Chapter III (*supra*, paragraph 17), but also in cases where she may take a similar interest in property under section 23 (2), section 24 (1), section 27 and section 39.

Its provisions are merely a development, with the requisite amplifications and with the addition of the necessary machinery, of the corresponding provisions of the Bill framed by the Commission. It has been settled in consultation with the local authorities and with a view to giving effect to what are understood to be the views of the Commission; but, having regard to the novelty and complication of the subject, it is not unlikely that when subjected to criticism it will be found susceptible of improvement in many particulars.

The limited estate taken by a Khojá female under this Bill resembles the estate taken by a Hindu widow, but there are many important differences between them. Mr. Melvill observes that the Khojá female estate is the more restricted of the two, but on this point he says the Khojás hold very strong views which he is of opinion must be respected.

20. In proceeding to notice the details of the chapter, the first point calling for attention is the phrase "restricted owner." It has been chosen merely on the ground that it is new and connotes nothing, and it is not unlikely that some more appropriate phrase may be suggested. The phrase "life-estate" and its correlative "reversion," used in the Bombay Bill, are not only open to the objection that ordinarily lies against all terms imported from another legal system, but further, as has been constantly observed of them in the case of the Hindu widow's estate, they suggest an altogether false analogy. The position, if it is necessary to illustrate it by reference to English law, is rather like that of a fee-simple estate subject to an executory devise.

21. As regards the attempt made in the Bill to define the estate, it will be observed that section 28 enacts that the female shall be absolutely entitled to the use of, and the income accruing from, the property during her life, and, except as otherwise provided by the Act, shall have all the other rights and powers of an absolute owner.

An objection has been taken to this on the ground that money saved by a widow from the income of the property should not belong to her absolutely but should go to her husband's heirs.

This contention is not based on any alleged actual practice, but is put forward merely as a "necessary consequence of the invariable custom" which limits the widow's interest in the *corpus* of her husband's property to the time during which she remains unmarried.

Now, not only is it not a necessary consequence of the custom in question, but it is, as admitted by the objectors themselves, in a certain sense illogical; for why should a person who has absolute power to dispose of the income as it comes in, in whatever way she pleases, be restricted from dealing with her savings from it?

Again, the only effect of adopting the proposed suggestion would, as the objectors themselves admit, generally be that the widow would squander the income as it came in; and, in the rare cases in which she allowed some of it to accumulate, the probability is that litigation would result from the difficulty of identifying the fund and separating it from the rest of her property. For these reasons the section has been allowed to stand.

22. Section 30 defines the obligations of the restricted owner as regards—

(*a*) the preservation of the substance of the property for those who are to come after her; and

(*b*) the protection of the title.

As regards "waste," it stands on a footing altogether peculiar in the case of the Hindu widow; and clause (*a*) of this section has been drawn with a view to placing it on a somewhat similar footing in the case of the restricted owner.

23. As regards the powers of alienation, in the limitations on which the restricted nature of the estate chiefly consists, the only powers of alienation for any time beyond the life of the restricted owner allowed to her by the Bill, besides a limited power of leasing conferred by section 29, are those specified in section 31, which runs as follows:—

Restricted owner's power of transfer.

"31. A female taking property as restricted owner shall have power to transfer the same, so that the transfer may have effect beyond her life, when, the income being insufficient, such transfer is necessary in order to raise money for any of the following purposes, namely:—

"(*a*) to discharge any of the obligations imposed by section 30;*

* *Viz.*, obligations to preserve the substance of the property and protect the title.

"(*b*) to discharge the debts of the absolute owner from whom the property descended;

"(*c*) to provide for the maintenance of any persons entitled under this Act to have their maintenance provided for out of the property, for the payment of any marriage expenses or funeral expenses payable under this Act out of the property, and for the performance of any ordinary family ceremonies; and

"(*d*) to support herself where she has no other sufficient means of support."

24. It has been urged by the two dissenting members of the Commission and by some other adherents of His Highness the Imám that a mother taking a restricted estate should have larger powers of alienation and that she or a widow taking a like estate should be empowered to alienate for religious objects; that is, as explained in the set of draft rules submitted by His Highness Aghá Alí Sháh, to give the property to the Imám; but, upon considering the arguments adduced and consulting the local authorities, the Government of India have determined to uphold the decision of the majority of the Commission, which is against the concession of any such powers.

25. In order to avoid as far as possible the great difficulties which arise in the case of a Hindu widow exceeding her power of alienation, an alienation in excess of the power has (section 29 of the Bill) been made absolutely void for any period beyond the restricted owner's life, except where the purchaser takes for consideration and without notice of the ownership being restricted. This, no doubt, standing alone, would place too great difficulties in the way of alienation; but sufficient relief will probably be afforded by the power to apply to a Court for sanction, which is given by section 32. It may be objected that it is undesirable to force people to resort to a Court in such matters; but the case is one of a choice of evils, and it is probably better that they should resort to the Court in every case where there is any room for doubt than run the risk of being involved in troublesome and expensive litigation later on.

A Court dealing with an application under section 32 is empowered (section 36) to accord its sanction to the transfer subject to the condition that the money thereby raised shall be paid into Court or to trustees appointed by the Court, and to give such further directions as it may think fit with a view to ensuring that the money shall be applied to the purpose for which it is raised, or that any balance that is not so applied shall be secured for the benefit of those entitled after the restricted owner.

26. It will be observed that no provision is made in the draft for alienation with the consent of the so-called "reversioners." This matter is one which gives rise to great difficulties in the case of the Hindu widow, and it seems impossible, having regard to the system of succession established by the Bill, to provide for it in any satisfactory manner. If provision had only to be made to meet the case of "reversioners" who claim under section 37 (1) and section 38 (3) by descent from the last absolute owner, the matter would be much simpler than in the case of the Hindu widow, inasmuch as these "reversioners" would always be known living persons or persons who would claim through them; but there are, besides these, the "reversioners" mentioned in section 38 (1) and (2), and it is thus impossible to fix upon any person whose consent would be sufficient.

27. Further, even if we were, as has been suggested, to waive this objection, and accept the consent of a merely presumptive "reversioner," there is another difficulty, namely, that the presumptive "reversioner" might (see section 39 of the Bill) be another restricted owner, possibly an old woman on the verge of the grave, whose prospect of succeeding would be extremely small. There might be several such persons intervening between the restricted owner and the first person who would take as absolute owner. We could hardly rest satisfied with anything short of the consent of this last person and all the intervening ones, and thus we should be landed in a considerable complication, leading in many cases to no very satisfactory result, inasmuch as the interest of the first person who would take as absolute owner, and to whose consent we would chiefly look, would often be of a remotely contingent nature. It is, of course, on economical grounds desirable to provide a means of freeing the property from the limited ownership, but the advantage would be dearly purchased if the basis of the purchaser's title were to be complicated in this way.

28. As regards the sale of property in execution of a decree against a restricted owner, it will be seen that the effect of section 34 of the Bill is that a person lending money for any of the purposes mentioned in section 31 can sell in execution nothing more than the so-called "life-interest" of the restricted owner, unless his loan is secured by a mortgage. The position of the restricted owner as regards anything beyond her so-called life-interest is, in fact, in this particular, somewhat similar to that of an English executor with power to charge the real estate. If it were otherwise, there might arise, in cases of execution for unsecured debts, the same difficult questions which the preceding sections are intended to shut out in cases of voluntary alienation.

29. It will be observed that, by sections 37 (2) and 38 (4) of the Bill the Crown is postponed to the general heirs of the restricted owner. This appears to be right, though it is gathered from the case of *The Collector of Masulipatam* v. *Cavely Vencata Narrainapah* (8 Moo. I. A. 529), this precise point was not there decided,—that it is otherwise in the case of a Hindu woman's estate.

30. Sections 35 and 36 in effect provide that the restricted owner shall represent the property in judicial proceedings and compromises of disputes and for the purposes of laws of limitation and prescription, so as to bind those who take after her.

31. Sections 37 to 39, which regulate the devolution of property after the death of the restricted owner, have been drawn with a view to carry out what is understood to be the intentions of the Commission.

Their main provisions are that—

(*a*) when the restricted owner dies unmarried, the property shall belong to the person to whom it would then have belonged if she had died before the absolute owner from whom it descended and it had descended under the Act without having been alienated, and in default of such person it shall descend as if the female were not a restricted owner; and

(*b*) when the restricted owner has been married, the property shall on her death go to certain of her descendants, and if there are no such descendants shall devolve as just stated.

32. From section 39 it will be seen, as already observed, that property may devolve upon two or more restricted owners in succession. This is to be regretted, but it seems to be an essential part of the scheme.

33. Section 40 regulates the legal relations arising where two or more widows of a deceased Khojá take his property together as restricted owners, and provides that there shall be a right of survivorship between them.

34. Section 41 provides that a widow marrying again after her husband's death shall not be entitled to take as restricted owner his property or any property of any of his lineal descendants which has descended to them from him, and that, if a widow taking any such property as restricted owner subsequently marries again, she shall be deemed for the purposes of certain sections of the chapter to have died. One effect of this latter provision is that the restricted ownership of the widow ceases on her re-marriage.

35. Coming now to Chapter VI, relating to the wills of Khojás, it will be observed that all matters connected with probate and letters of administration are in the case of Khojás, as in the

case of other persons not subject to the Indian Succession Act, left to be dealt with under the Probate and Administration Act, 1881. The result of this is that the matters remaining to be provided for under this chapter are in the main the same as those which are provided for by the Hindu Wills Act, 1870, as amended by the Act just mentioned; and, as a matter of fact, the specification of the sections of the Indian Succession Act made applicable to the wills of Khojás by this chapter is based on the specification contained in the Hindu Wills Act as cut down by the Probate and Administration Act, 1881. There are, however, some important differences between the two which call for explanation here.

36. The most important of these differences is connected with the limitation on the powers of testamentary disposition. The specification of the sections of the Indian Succession Act applicable to Hindus, &c., contained in the Hindu Wills Act comprises several sections which either confer, or assume the existence of, a power of disposition in favour of unborn persons, but the Act contains a proviso to the effect that nothing therein contained shall authorize any Hindu, &c., to create in property any interest which he could not previously have created, and the Calcutta High Court have held in the recent case of *Alangamonjori Dabee* v. *Sonamoni Dibee* (I. L. R. 8 Cal. 637) that the effect of that proviso is to cut down the power of disposition which the sections in question confer or assume to exist, to the limits imposed on a testator by the Hindu law, that is to say, as held in the well-known *Tagore* case, to a mere power of disposition in favour of persons who are either in fact or in contemplation of law in existence at the death of the testator.

37. It will be seen, on reference to the report of *Alangamonjori Dabee's* case, that, though there was no difference of opinion in the Appellate Court which finally heard it, much difficulty arose from the form in which the Hindu Wills Act had been drafted, and that the learned Judge in the Court below had been led by this to take the opposite view. This being so, it was obvious that the drafting of the Hindu Wills Act could not be followed in this particular. Moreover, it was seen that to adopt this form of drafting would in a considerable number of cases expose the testamentary dispositions of Khojás to be called in question for reasons drawn or supposed to be drawn from the extremely vague and unsettled customary law now prevailing among them, and thus the object of the present measure, which is intended to supply a definite body of law, would be to a great extent defeated. It was accordingly resolved to enact directly either that a Khojá's power of testamentary disposition should be co-extensive with that allowed by the Indian Succession Act, or should be limited somewhat in accordance with the ruling in the *Tagore* case.

38. It was clear that the question as to which of these courses should be adopted stood on grounds altogether independent of those on which the perpetuity question among Hindus had been discussed. The considerations with reference to which it should, in the opinion of the Government of India, be decided will be best seen from the remarks made on referring it to the local authorities for opinion. It was observed that the point was one in regard to which there was no recognized definite rule among the Khojás, and that if, having regard to the family system of that sect and its requirements in this particular, it was considered that it would be desirable to confer upon Khojás a power of disposition as large as that conferred by the Succession Act, the Governor General in Council would be prepared to confer that power; that the circumstance that, in the absence of any other rule, the Courts presume the Hindu law to be applicable to Khojás, and so might possibly, if the question then arose, hold a Khojá testator limited by the rule in the *Tagore* case, ought not, in the opinion of the Governor General in Council, to be permitted to stand in the way of such legislation. "The Government of India," it was said, "has ever been reluctant to alter, by legislation, personal laws like those of the Hindus and Muhammadans, which are definitely ascertainable and are established on a religious or *quasi*-religious basis; but a rule of Hindu law, which is applied not as such, but merely by virtue of the presumption above referred to, in the absence of any other ascertainable rule, to persons who are by religion not Hindus but Mussulmans, stands in its application to such persons on a totally different footing; and, if it appears expedient to set it aside as regards them, there need be no hesitation about doing so. The rule of the *Tagore* case, assuming that it would at this moment be applied by the Courts to Khojás, is as applied to them no more sacred or immutable than any of the other rules of Hindu law which at this moment may be applicable to Khojás, but which will be modified by the Bill if it becomes law. No difficulty will, therefore, be raised here on this score."

If, on the other hand, it was observed, it should appear that the rule prohibiting dispositions in favour of unborn persons had, as a matter of fact, been recognised and observed among the Khojás, or if, there being no recognized rule or established practice either way, it should be considered that the powers of disposition allowed by the Succession Act were larger than were needed for the requirements of Khojás, it would probably be desirable to limit the power of disposition in some such way as it is limited by the Hindu law as interpreted in the *Tagore* case. The system of intestate succession established by the Bill was in certain respects a complicated one; and if to this were to be added a power of making complicated dispositions by will, it was to be feared that we should bring about, in regard to the property of this wealthy and important sect, a state of things which it was desirable if possible to avoid.

39. The reply of the local authorities was to the effect that, as far as appeared, there was no recognized definite rule among the Khojás bearing on the point; that it was unlikely that

any attempt had hitherto been made among them to create by will an interest in favour of an unborn person; that there was thus a *tabula rasa*; and that it was quite open to the legislature to legislate on the subject as it thought best without any fear of violating an existing custom or of running counter to any prejudice or desire of the Khojá community.

This being so, the Government of India have come to the conclusion that it is undesirable to confer on Khojás any power of testamentary disposition in favour of persons not in existence at the time of the testator's death; and accordingly all portions of the Indian Succession Act which confer, or assume the existence of, such a power have, as far as practicable, been omitted, a proviso at the same time being inserted to the effect that a bequest by a Khojá in favour of any person who has not come into existence at the death of the testator shall be void.

40. The remaining differences between this Bill and the Hindu Wills Act as regards the provisions of the Indian Succession Act applied by them are of less importance.

It may, however, be stated that the following additional provisions of the Succession Act have been made applicable, namely:—

(*a*) section 47, giving a father power to appoint a guardian by will—a power the existence of which was assumed by the Commission;

(*b*) sections 52 and 53, relating to privileged wills;

(*c*) section 84, which provides that, when property is bequeathed to a person and words are added which describe a class of persons but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole of the interest of the testator therein unless a contrary intention appears by the will;

(*d*) section 101, which limits directions for accumulation.

It should be added that section 187 of the Indian Succession Act, which provides that no right as executor or legatee can be established until a grant of probate or letters of administration is obtained, has been omitted for reasons similar to those which led to its being ultimately omitted from the Probate and Administration Act, 1881; and that sections 134 and 135, determining whether property bequeathed to two or more persons in succession should when its value is liable to decrease be retained in its original form, have been omitted, as it seems safer in this country to lay down no hard-and-fast rules on the subject.

41. The only other point calling for notice in connection with this chapter is that section 43, following the proviso to section 10 of the Transfer of Property Act, confers a power of bequeathing property to or for the benefit of a woman, so that she shall not have power to transfer or charge the same or her beneficial interest therein. The existence of such a power appears to have been assumed in the Bill prepared by the Commission.

43. Chapter VII, relating to maintenance and marriage and funeral expenses, calls for little notice. There was some obscurity about the corresponding provisions of the Bill prepared by the Commission, and this chapter has now been settled in accordance with what is understood from the local authorities to have been the original intention. It is believed that the only change of a substantive nature made here is in section 46, where provision has been made for the maintenance, &c., of a daughter while she remains unmarried. The chapter, however, will probably be found open to further amendment when it has been more fully considered.

43. Section 47, which provides for the recovery of sums due under this chapter, has been drawn with a view to precluding, as far as possible, the difficulties which have arisen under the Hindu law in regard to claims for maintenance, and in particular as to how far a person having a right to maintenance is entitled to follow the property of the deceased. As regards this last point, it has been thought best to place the claim for maintenance, &c., on the footing of a debt, postponing it, however, to debts proper. This will not absolutely remove all difficulty, but, by bringing the case within an existing class, it will avoid the creation of a new difficulty.

The 1st July, 1884.

C. P. ILBERT.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, JULY 26, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th July, 1884, and was referred to a Select Committee :—

No. 8 OF 1884.

THE KHOJÁ SUCCESSION BILL, 1884.

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SCHEDULE.—PORTIONS OF THE INDIAN SUCCESSION ACT (X OF 1865) MODIFIED FOR APPLICATION TO WILLS MADE BY KHOJÁS.

Explanation of abbreviation used in the margin.

"Bo. Bill" refers to the draft Bill prepared by the Commission and received with the letter from the Government of Bombay, No. 216, dated 14th January, 1880.

A Bill to amend and define the law of Testamentary and Intestate Succession to Khojás.

WHEREAS it is expedient to amend and define the law applicable to testamentary and intestate succession to Khojás; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Khojá Succession Act, 1884; and it shall extend to the whole of British India.

Short title. Local extent.

2. Except as provided by any other law for the time being in force, succession to the property, whether moveable or immoveable, in British India of a Khojá dying on or after the first day of January eighteen hundred and eighty-five shall be regulated by the rules contained in this Act, wherever he may have had his domicile at the time of his death. [Act X of 1865, s. 5.]

Application.

Explanation.—Property in British India includes obligations enforceable there.

3. (*1*) In this Act, unless there is something repugnant in the subject or context,— [Bo. Bill, s. 3.]

Definitions.

"son" means a legitimate son, and does not include an adopted son:

"grandson" means a son's son:

"great-grandson" means a grandson's son:

"daughter" means a legitimate daughter:

"father" and "mother" do not include step-father and step-mother:

"grandfather" and "grandmother" do not include a father's step-father or step-mother:

"brother" and "sister" do not include step-brother and step-sister, nor half-brother and half-sister:

"half-brother" means son of the same father but by another wife:

"lineal male descendant," used with reference to any person, means a male descended from that person through males only: [New.]

"degree" means a degree of kindred computed according to the rules laid down in sections 21, 22 and 24 of the Indian Succession Act, 1865, and the table of consanguinity thereto annexed: X of 1865.

"undivided property" means a share in the property belonging to an undivided family: [Home Dept. Office Memo. dated 12th August, 1868, para. 7.]

"restricted owner," used with reference to any property, means a female acquiring that property in the manner specified in section 21, section 23, sub-section (2), section 24, sub-section (1), section 27 and section 39. [New.]

(*2*) When it is provided in this Act that the members of any class shall take property and the shares which they are respectively to take therein are not specified, they shall take equal shares therein.

4. For the purposes of this Act there shall be no distinction between ancestral and self-acquired property, nor between moveable and immoveable property, nor between those born in the lifetime of a deceased owner of property and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive. [Bo. Bill, s. 7.] [Act X of 1865, s. 25.]

No distinction between ancestral and self-acquired, nor between moveable and immoveable, property.
Child in womb.

The Khojá Succession Bill, 1884.
(Chapter II.—Of Succession to the Undivided Property of a Male Khojá dying intestate.—Sections 5-6.)
(Chapter III.—Of Succession to the Separate Property of a Male Khojá dying intestate.—Sections 7-20.)

CHAPTER II.

OF SUCCESSION TO THE UNDIVIDED PROPERTY OF A MALE KHOJÁ DYING INTESTATE.

[Bo. Bill, ss. 8-12.]

5. (*1*) When a male Khojá owning undivided property dies intestate in respect of that property, leaving legitimate lineal male descendants not more remote than the fourth degree, every such descendant shall be entitled to a share in that property unless one of the persons through whom he is descended from the intestate is living.

Where there are lineal male descendants within fourth degree.

(*2*) When the sharers under sub-section (1) all stand in the same degree of kindred to the intestate, their shares shall be equal.

[Act X of 1865, s. 33.]

(*3*) When the sharers under sub-section (1) do not all stand in the same degree of kindred to the intestate, the property shall be divided into such a number of equal shares as will correspond with the number of the sharers who stood in the nearest degree of kindred to him at his decease, and of his lineal male descendants of the like degree of kindred who died before him, and through whom the other sharers are descended from him; and one such share shall be allotted to each of the sharers who stood in the nearest degree of kindred to the intestate at his decease; and one such share shall be allotted in respect of each such deceased male descendant; and the share allotted in respect of each such deceased male descendant shall be divided among the sharers descended through him, in such manner that the sons of any person shall always take that which their father would have been entitled to if he had survived the intestate.

[Bo. Bill, s. 13.]

6. In default of legitimate lineal male descendants as aforesaid, the property of the intestate shall be divided equally among all the male members of his undivided family living at his death.

Where there are no lineal male descendants within fourth degree.

CHAPTER III.

OF SUCCESSION TO THE SEPARATE PROPERTY OF A MALE KHOJÁ DYING INTESTATE.

[Bo. Bill, s. 16.]

7. When a male Khojá owning property, not being undivided property, dies intestate in respect of that property, leaving legitimate lineal male descendants not more remote than the fourth degree, the property shall descend in the manner provided in section 5.

Where there are lineal male descendants within fourth degree.

[Bo. Bill, s. 17.]

8. In default of legitimate lineal male descendants as aforesaid, the intestate's father shall succeed to the property.

In default of such lineal male descendants, property to belong to the intestate's father.

[Bo. Bill, s. 18.]

9. In default of the father, the intestate's mother shall succeed to the property.

In default of the father, to the mother.

[Bo. Bill, s. 19, see infra, s. 34.]

10. In default of the mother, the widow or widows of the intestate shall succeed to the property.

In default of the mother, to the widows.

11. In default of widows, the daughters of the intestate shall succeed to the property. [Bo. Bill, s. 20.]

In default of widows, to the daughters.

12. (*1*) In default of daughters, the sons of daughters shall succeed to the property, the sons of each daughter taking an equal share: [Bo. Bill, s. 21.]

In default of daughters, to daughters' sons and to brothers.

Provided that, if the intestate has left brothers surviving him, the daughters' sons shall succeed to a moiety of the property, the sons of each daughter taking an equal share, and the brothers shall take the other moiety.

(*2*) In default of daughters' sons, the brothers shall take the whole of the property.

13. In default of brothers, the daughters of the intestate's sons shall succeed to the property, the daughters of each son taking an equal share. [Bo. Bill, s. 22.]

In default of brothers, to sons' daughters.

14. In default of sons' daughters, the sons of the intestate's brothers shall succeed to the property, the sons of each brother taking an equal share. [Bo. Bill, s. 23.]

In default of sons' daughters, to brothers' sons.

15. In default of brothers' sons, the half-brothers of the intestate shall succeed to the property. [Bo. Bill, s. 24.]

In default of brothers' sons, to half-brothers.

16. In default of half-brothers, the sons of half-brothers shall succeed to the property, the sons of each half-brother taking an equal share. [Bo. Bill, s. 25.]

In default of half-brothers, to half-brothers' sons.

17. In default of sons of half-brothers, the paternal grandfather shall succeed to the property; and in default of the paternal grandfather, the paternal grandmother shall succeed to it. [Bo. Bill, s. 26.]

In default of half-brothers', sons, to the grandfather; and in default of the grandfather, to the grandmother.

18. In default of the paternal grandmother, the paternal uncles shall succeed to the property. [Bo. Bill, s. 27.]

In default of the grandmother, to paternal uncles.

19. In default of paternal uncles, the sisters of the intestate shall succeed to the property. [Bo. Bill, s. 28.]

In default of paternal uncles, to sisters.

20. In default of sisters, the property shall belong to those of the intestate's relatives on the father's side who stand in the nearest degree of kindred to the intestate; and, in default of relatives on the father's side, to those of the intestate's relatives on the mother's side who stand in the nearest degree of kindred to the intestate: [Bo. Bill, s. 29.]

In default of sisters, to the nearest of kin.

Provided that no female relative shall be entitled to share in the property if there is a male relative standing on the same side in the same degree of kindred to the intestate.

The Khojá Succession Bill, 1884.

(Chapter IV.—Of Succession to the Absolute Property of a Female Khojá dying intestate.—Sections 23-27.)

(Chapter V.—Of Property which a Female takes as Restricted Owner, and the further Succession to the same.—Section 28.)

[Bo. Bill, s. 33. See *sec.* 48, *infra.*]

When female takes as restricted owner under foregoing sections.

21. If, at the death of the intestate, any of the male heirs mentioned in sections 7 to 18 (both inclusive), or any male relative of the intestate on the father's side not more remote than the seventh degree of kindred to the intestate, is living, a female succeeding under any of the foregoing sections shall take the property as restricted owner.

[Bo. Bill, s. 30.]

Widow's right to retain possession of ornaments.

22. When a male Khojá dies intestate in respect of any ornaments belonging to him, and not being undivided property, which are in the possession of his wife with his consent, and the wife does not acquire the ownership, whether absolute or restricted, of the ornaments under this Act, she shall be entitled to retain possession of them until she dies or re-marries.

CHAPTER IV.

OF SUCCESSION TO THE ABSOLUTE PROPERTY OF A FEMALE KHOJÁ DYING INTESTATE.

[Bo. Bill, s. 38.]

Descent of unmarried female's absolute property.

23. (*1*) When an unmarried female Khojá owning property otherwise than as a restricted owner dies intestate in respect of that property, it shall belong to her brothers; in default of brothers, to her father; in default of the father, to her mother; in default of the mother, to the relatives of the intestate on the father's side who stand in the nearest degree of kindred to the intestate; and, in default of such relatives, to the relatives on the mother's side who stand in the nearest degree of kindred to the intestate.

[Bo. Bill, ss. 32 & 33.]

(*2*) If at the death of the intestate any male relative of the intestate on the father's side not more remote than the seventh degree of kindred to the intestate is living, a female succeeding under this section, whether in preference to or together with that male relative, shall take the property as restricted owner.

[Bo. Bill, s. 30.]

Descent of married female's absolute property.

24. (*1*) When a married female Khojá owning property otherwise than as restricted owner dies intestate in respect of that property, it shall belong to her sons and daughters; and the daughters shall take it as restricted owners.

[Bo. Bill, s. 32.]

(*2*) In default of sons and daughters, the property shall, except as provided in sub-section (3), belong to her husband.

(*3*) If the property has been given to the female on the occasion of her marriage separately from the "Dej" for her sole use and benefit by her parents or relatives, it shall, in default of sons and daughters, belong—

(*a*) to her father; and

(*b*) in default of the father, to the person to whom it would then have belonged if it had been the property of the father at his death and had descended without having been alienated.

(*4*) A female taking property under clause (*b*) of sub-section (3) shall not take it as restricted owner.

Descent of absolute property of widow or divorced female leaving lineal descendants within the fourth degree.

25. (*1*) When a female Khojá, being a widow or divorced and owning property otherwise than as restricted owner, dies intestate in respect of that property, leaving legitimate lineal descendants not more remote than the fourth degree, every such descendant shall be entitled to a share of the property unless one of the persons through whom he is descended from the intestate is living.

[Bo. Bill, s. 37.]

(*2*) When the sharers under sub-section (1) all stand in the same degree of kindred to the intestate, their shares shall be equal.

[Act X of 1865, s. 33.]

(*3*) When the sharers under sub-section (1) do not all stand in the same degree of kindred to the intestate, the property shall be divided into such a number of equal shares as may correspond with the number of the sharers who stood in the nearest degree of kindred to her at her decease, and of lineal descendants of the like degree of kindred who died before her and through whom the other sharers are descended from her; and one such share shall be allotted to each of the sharers who stood in the nearest degree of kindred to the intestate at her decease; and one such share shall be allotted in respect of each such deceased descendant; and the share allotted in respect of each such deceased descendant shall be divided among the sharers descended through him, in such manner that the children of any person shall always take what that person would have been entitled to if he had survived the intestate.

[Bo. Bill, s. 37.]

Where there are no such lineal descendants.

26. (*1*) In default of the descendants mentioned in section 25, the property shall belong to the brothers of the intestate; in default of brothers, to her father; in default of the father, to her mother.

(*2*) In default of the mother, the property shall belong to the relatives of the intestate on the father's side who stand in the nearest degree of kindred, and, in default of such relatives, to the relatives of the intestate on the mother's side who stand in the nearest degree of kindred.

[Bo. Bill, s. 32.]

When female taking under section 25 or 26 takes as restricted owner.

27. If, at the death of the intestate, any of the male heirs mentioned in section 25 and the first sub-section of section 26, or any male relative of the intestate on the father's side not more remote than the seventh degree of kindred to the intestate, is living, a female succeeding under section 25 or section 26, whether in preference to or together with that heir or relative, shall take the property as restricted owner.

CHAPTER V.

OF PROPERTY WHICH A FEMALE TAKES AS RESTRICTED OWNER, AND THE FURTHER SUCCESSION TO THE SAME.

[Bo. Bill, s. 3; "life-estate," "estate," "stridhan."]

Nature of restricted ownership generally.

28. A female taking property as restricted owner shall be absolutely entitled to the use of, and the income accruing from, that property during her life, and, except as otherwise provided by this Act, shall have all the other rights and powers of an absolute owner in respect of that property.

The Khojá Succession Bill, 1884.

(Chapter V.—Of Property which a Female takes as Restricted Owner, and the further Succession to the same.—Sections 29-36.)

[Bo. Bill, s. 3; "life-estate."]

Powers of alienation limited.

29. Except as provided by section 31, no right to, over or in respect of property created by a restricted owner of that property shall have effect for any time beyond her life:

[New.]

Provided that nothing in this section shall affect a lease granted at a fair rent for a term not exceeding twenty years, and without payment of any fine or premium, or a right created for consideration in favour of a person acting in good faith, and without notice of the ownership being restricted.

[Act II of 1882, s. 3.]

Explanation.—A person has notice of the ownership being restricted when he actually knows that it is restricted, or when, but for wilful abstention from enquiry or gross negligence, he would have known it, or when information of it is given to, or obtained by, his agent under the circumstances mentioned in the Indian Contract Act, 1872, section 229.

IX of 1872.

Obligations of restricted owner.

30. A female taking property as restricted owner shall be bound, so far as it is possible for her to do so without applying her other property for that purpose,—

(*a*) to preserve the substance of the property without any material alteration, deterioration or diminution except such as may be essential to the realization of the full income of it in a reasonable manner, and to deal with it in all respects as carefully as a person of ordinary prudence would deal with property which he hoped to transmit in good condition to his heirs; and

[Act II of 1882, s. 13.]

(*b*) to make such payments, institute, maintain and defend such suits and other proceedings, and take such other steps as, regard being had to the nature and amount or value of the property, may be reasonably requisite for the assertion and protection of the title thereto, for the protection of the interest of those who are to take it after her, or for the recovery of any portion of it which is not in her possession.

[Bo. Bill, s. 3; "life-estate."]

Restricted owner's power of transfer.

31. A female taking property as restricted owner shall have power to transfer the same, so that the transfer may have effect beyond her life when, the income being insufficient, such transfer is necessary in order to raise money for any of the following purposes, namely:—

(*a*) to discharge any of the obligations imposed by section 30;

(*b*) to discharge the debts of the absolute owner from whom the property descended;

(*c*) to provide for the maintenance of any persons entitled under this Act to have their maintenance provided for out of the property, for the payment of any marriage expenses or funeral expenses payable under this Act out of the property, and for the performance of any ordinary family ceremonies; and

(*d*) to support herself where she has no other sufficient means of support.

Power to apply to [illegible] section a transaction 31.

32. (*1*) A restricted owner of property may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction to sanction any transfer of that property which she proposes to make under section 31.

(*2*) The petition must state the names of all the persons interested in the application so far as they can be ascertained, and must be verified by the applicant or by some other competent person in the manner required by law for the verification of 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, that person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code. XLV of 1860.

(*3*) A copy of the petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(*4*) A transfer made with the sanction of a Court obtained under this section shall be deemed to be warranted by section 31.

[New.]

Power to direct money raised to be paid into Court.

33. A Court dealing with an application under section 32 may, if it thinks fit, sanction the transfer proposed subject to the condition that the money raised by the transfer shall be paid into Court or to trustees appointed by the Court, and may give such further directions as it thinks fit with a view to ensuring that the money shall be applied to the purpose for which it is raised, or that any balance thereof which is not required for that purpose, shall be secured for the benefit of those who would take the property after the restricted owner.

Effect of sale in execution against restricted owner.

34. When property belonging to a female as restricted owner is sold in execution of a decree passed against her, the interest taken by the purchaser shall cease on her death,—

except when, without any collusion between her and the plaintiff,—

(*a*) the decree is passed against her as representative of the absolute owner from whom the property descended; or

(*b*) the decree is one for sale passed on a mortgage made under section 31 so as to take effect beyond the life of the female.

Effect of decision or compromise to which the restricted owner is a party.

35. A decision in any suit or other proceeding, or a compromise of any dispute, relating to the property to which the restricted owner is a party, shall, except where she acts in collusion with the party opposed to her, bind those who take the property after her under this Act in the same manner and to the same extent as if she were an absolute owner of the property.

Effect of lapse of time during continuance of restricted ownership.

36. In any case in which, under any enactment for the time being in force, an owner of property would by lapse of time lose any right to, over or in respect of that property, or any means of enforcing any such right, or another person would by lapse of time acquire any right to, over or in respect of that property, any period which elapses during the continuance of the restricted ownership shall be reckoned as against those taking the property after the termination of that ownership in the same manner and to the same extent as if the restricted owner had been an absolute

The Khojá Succession Bill, 1884.

(Chapter VI.—Of Wills of Khojás.—Sections 42-43.)

owner of the property and it had been taken by them as her heirs.

[Bo. Bill, s. 39.]

Further descent of property held by unmarried female as restricted owner.

37. (*1*) When property has descended to a female as restricted owner and she dies unmarried, it shall belong to the person to whom it would then have belonged if she had died before the absolute owner from whom it descended and it had descended under this Act without having been alienated.

(*2*) In default of such person, the property shall descend as if the female were not a restricted owner.

[Bo. Bill, s. 41.]

Further descent of restricted property of married or divorced female or widow.

38. (*1*) When property has descended to a female as restricted owner and she dies, being at the time of her death married, a widow or divorced from her husband, the property shall be divided among her legitimate lineal male descendants, not being more remote than the fourth degree, those nearest in degree of kindred to her excluding the more remote, and, when those nearest in degree are not her sons, the property being so divided amongst them that the sons of any person shall take the share which he would have taken if the fathers of all had survived the restricted owner.

(*2*) In default of legitimate lineal male descendants as aforesaid, the property shall belong to the daughters of the deceased; in default of daughters, the property shall belong to the legitimate lineal male descendants of daughters, not being more remote from the deceased than the fourth degree, those nearest in degree excluding the more remote; the descendants of each daughter, when they take, taking an equal share, and when they are not sons of the daughters, that share being so divided among them that the sons of any person shall take what he would have taken if the fathers of all had survived the restricted owner.

(*3*) In default of legitimate lineal male descendants of daughters as aforesaid, the property shall belong to the person to whom it would then have belonged if the restricted owner had died before the absolute owner from whom it descended, and it had descended under this Act without having been alienated.

(*4*) In default of such person, the property shall descend as if the female were not a restricted owner.

Bill, s.

When female taking property under sections 37 and 38 takes as restricted owner.

39. When property, having descended to a female as restricted owner, subsequently descends to another female under section 37, sub-section (1), or section 38, sub-section (3), that female shall take it as restricted owner.

s.

Widows taking together as restricted owners to have a right of survivorship.

40. Notwithstanding anything in the foregoing sections, when two or more widows of a deceased Khojá take his property under this Act as restricted owners,—

(1) there shall be as between them a right of survivorship in respect of that property;

(2) the proviso to section 29 shall not apply to any share of or any right to, over or in respect of the property, or any part or share thereof, granted or created by one or more of them without the consent in writing of the other or others of them then surviving;

(3) section 31 and section 32 shall not apply to any transfer made by one or more of them without the consent in writing of the other or others of them then surviving;

(4) section 35 shall not apply to any decision in any suit or proceeding or to any compromise unless all of them then surviving are parties to that suit, proceeding or compromise.

[Bo. Bill, s. 34; Act XV of 1856, s. 2.]

Effect of re-marriage of widow claiming or holding as restricted owner.

41. Notwithstanding anything in the foregoing sections, a widow marrying again after her husband's death shall not be entitled to take as restricted owner his property or any property of any of his lineal descendants which has descended to them from him; and a widow taking any such property as restricted owner under the foregoing sections and subsequently marrying again shall, for the purpose of applying sections 28, 29, 34, 38 and 40, to that property, be deemed to have died.

CHAPTER VI.

OF WILLS OF KHOJÁS.

[Bo. Bill, ss. 4, 5 & 6.]

Extension of portions of Act X of 1865 with certain modifications to wills of Khojás.

42. Subject to the provisions of this Act, the portions of the Indian Succession Act, 1865, set forth in the schedule hereto annexed, with the modifications shown in that schedule, shall, notwithstanding anything contained in section 331 of that Act, apply to all wills made by a Khojá, whether male or female, dying on or after the first day of January eighteen hundred and eighty-five; and

X of 1865.

in the portions of the Act so applying all words defined in section 3 of the Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as that section has attached to them respectively;

Provided that—

(*a*) For the purpose of the portions of the Act so applying, no person to whom the Indian Majority Act, 1875, applies shall be deemed to have attained his majority before the time specified in this behalf in that Act.

IX of 1875.

(*b*) A bequest by a Khojá in favour of any person who has not come into existence at the death of the testator, or in favour of a class of persons any one of whom has not come into existence at that time, shall be void.

(*c*) When a bequest is void under clause (*b*), any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest shall also be void.

[Act IV of 1882, s. 16.]

Bequest of property to woman without power to transfer or charge.

43. Notwithstanding anything contained in the foregoing sections, a Khojá may bequeath property to or for the benefit of a woman so that she shall not have power to transfer or charge the same or her beneficial interest therein.

The Khojá Succession Bill, 1884.

(Chapter VII.—Of Maintenance and Marriage and Funeral Expenses.—Secs. 44-47.)

(Chapter VIII.—Miscellaneous.—Sections 48-51.)

CHAPTER VII.

OF MAINTENANCE AND MARRIAGE AND FUNERAL EXPENSES.

[Bo. Bill, ss. 34 & 43.]

Maintenance and funeral expenses payable out of intestate's property.

44. (*1*) The amount requisite for the maintenance of the following persons and the amount of their necessary funeral expenses shall, if they do not possess or leave means sufficient for the purpose, be payable out of any property of a deceased male Khojá in respect of which he has died intestate.

(*2*) The persons referred to are—

(*a*) the widow or widows of the deceased Khojá and the widows of his legitimate lineal male descendants, provided they have not married again;

(*b*) every daughter and sister (whether legitimate or not) of the deceased Khojá, and every legitimate daughter of his son, grandson or great-grandson, except when she has been married and her husband is living;

(*c*) the father, mother, grandfather and grandmother of the deceased Khojá; and

(*d*) his illegitimate sons until they attain their majority.

[Bo. Bill, s.

Marriage expenses payable out of intestate's property.

45. The expenses of the first or only marriage of every daughter (whether legitimate or not) of a deceased male Khojá, and of every legitimate daughter of his deceased son, grandson or great-grandson, if not otherwise sufficiently provided for, shall be payable out of any of his property in respect of which he has died intestate.

[Bo. Bill, s. 43.]

Maintenance and funeral expenses payable out of property of testator.

46. If a male Khojá dies leaving a legitimate lineal male descendant who has not attained his majority, or a daughter who is unmarried or a widow, and having disposed of his property by will in such a manner as to leave that descendant, daughter or widow without sufficient means for the purpose, the amount requisite for the maintenance, of the descendant during his minority, or of the daughter while she remains unmarried or of the widow until her death or re-marriage (as the case may be) shall be payable out of the testator's property; and if the descendant dies before he attains his majority or the daughter dies unmarried or the widow dies without re-marrying, his or her necessary funeral expenses shall be payable out of that property.

[Rev.]

Recovery of sums claimable under sections 44, 45 and 46.

47. Any sum claimable for maintenance or marriage expenses or funeral expenses under section 44, section 45 or section 46 out of any property of a deceased male Khojá shall be recoverable as if it was due under a contract made by the Khojá in his lifetime and he had died leaving only that property:

Provided that—

(*a*) the property shall be applied to the payment of debts due by the deceased before being applied to the payment of sums so claimable;

secondly, no decree shall be passed for arrears of any allowance on account of maintenance unless the amount of the allowance has been fixed by agreement or by order of a Court; and

thirdly, when a suit is instituted for the purpose of having any such allowance fixed against a person taking the property by intestate succession, and that person is able and willing to maintain or provide for the maintenance of the person by or on whose behalf the suit is instituted, and gives security to the satisfaction of the Court for his so doing, the Court may, if it thinks fit, dismiss the suit.

CHAPTER VIII.

MISCELLANEOUS.

[Bo. Bill, s. 42. Act X of 1865, s. 29.]

Property when to go to the Crown.

48. When a Khojá dies intestate in respect of any of his property, and there is no person entitled to take that property under the foregoing sections, it shall go to the Crown.

Females succeeding under this Act to take as males, except in certain cases.

49. Except as otherwise provided by this Act—

(*1*) a female taking property by intestate succession under this Act shall have the same interest in it, and the same powers in respect of it, as if she were a male; and

(*2*) a female taking property under any testamentary disposition under this Act shall have the same interest in it, and the same powers in respect of it, as a male taking under a like disposition.

[Bo. Bill, Act XV of 1856, s.

Guardianship of children where widow remarries.

50. If a widow of a deceased Khojá, not having been appointed by his will to be guardian for his children, marries again, she shall not be entitled as of right to be appointed guardian of the children by a Court under any law for the time being in force relating to the appointment of guardians, and, when she has before her remarriage been so appointed, a Court having jurisdiction to appoint a guardian for the children may in its discretion remove her from the guardianship.

Property transferable by gift made in contemplation of death.

51. A Khojá may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

A gift is said to be made in contemplation of death where a person who is ill and expects to die shortly of his illness delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

Such gift resumable.

Such a gift may be resumed by the giver.

When it fails.

It does not take effect if he recovers from the illness during which it was made, nor if he survives the person to whom it was made.

The Khojá Succession Bill, 1884.

(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

Illustrations.

(*a.*) A being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death—

a watch:

a bond granted by C to A:

a bank-note:

a promissory note of the Government of India endorsed in blank:

a bill of exchange endorsed in blank:

certain mortgage-deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—

the watch:

the debt secured by C's bond:

the bank-note:

the promissory note of the Government of India:

the bill of exchange:

the money secured by the mortgage-deeds.

(*b.*) A being ill, and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

(*c.*) A being ill, and in expectation of death, puts aside certain articles in separate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

SCHEDULE.

(*See Section 42.*)

PORTIONS OF THE INDIAN SUCCESSION ACT (X OF 1865) MODIFIED FOR APPLICATION TO WILLS MADE BY KHOJÁS.

Note.—Modifications are shewn in italics; omissions by asterisks.

PART VII.

Of Wills and Codicils.

Persons capable of making wills.

46. Every person of sound mind and not a minor may dispose of his property by will.

Explanation 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf, or dumb, or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

Illustrations.

(*a.*) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(*b.*) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid will.

(*c.*) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

Testamentary guardian.

47. A father, whatever his age may be, may by will appoint a guardian or guardians for his child during minority.

Will obtained by fraud, coercion or importunity.

48. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Illustrations.

(*a.*) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a will in his, A's, favour; such will has been obtained by fraud and is invalid.

(*b.*) A by fraud and deception prevails upon the testator to bequeath a legacy to him. The bequest is void.

(*c.*) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(*d.*) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(*e.*) A being of sufficient intellect, if undisturbed by the influence of others, to make a will, yet being so much under the control of B that he is not a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(*f.*) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport, and does so merely to purchase peace, and in submission to B. The will is invalid.

(*g.*) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(*h.*) A, with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

Will may be revoked or altered.

49. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

PART VIII.

Of the Execution of Unprivileged Wills.

Execution of unprivileged wills.

50. Every testator, not being a soldier employed in an expedition, or engaged in actual warfare, or a mariner at sea, must execute his will according to the following rules:—

First.—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it

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intended thereby to give effect to the writing as a will.

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign *or affix his mark to* the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Incorporation of papers by reference.

51. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

PART IX.

Of Privileged Wills.

Privileged wills.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made as is mentioned in the fifty-third section. Such wills are called privileged wills.

Illustrations.

(*a.*) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(*b.*) A is at sea in a merchant-ship, of which he is the purser. He is a mariner, and being at sea can make a privileged will.

(*c.*) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(*d.*) A, a mariner of a ship in the course of a voyage, is temporarily on shore, while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(*e.*) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(*f.*) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

Mode of making, and rules for executing, privileged wills.

53. Privileged wills may be in writing, or may be made by word of mouth.

The execution of them shall be governed by the following rules:—

First.—The will may be written wholly by the testator, with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will, if it be shown that it was written by him, or by his directions, or that he recognized it.

If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed, the instrument shall not by reason of that circumstance be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

Fourth.—If the soldier or mariner shall have written instructions for the preparation of his will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his will.

Fifth.—If the soldier or mariner shall, in the presence of two witnesses, have given verbal instructions for the preparation of his will, and they shall have been reduced into writing in his lifetime, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will.

PART X.

Of the Attestation, Revocation, Alteration and Revival of Wills.

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Witness not disqualified by interest or by being executor.

55. No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

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Revocation of unprivileged will or codicil.

57. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than * * * * * by another will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Illustrations.

(*a.*) A has made an unprivileged will. Afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(*b.*) A has made an unprivileged will. Afterwards, A being entitled to make a privileged will, makes a privileged will which purports to revoke his unprivileged will. This is a revocation.

Effect of obliteration, interlineation or alteration in unprivileged will.

58. No obliteration, interlineation or other alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will

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as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Revocation of privileged will or codicil.

59. A privileged will or codicil may be revoked by the testator, by an unprivileged will or codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation.—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged will.

Revival of unprivileged will.

60. No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same;

Extent of revival of will or codicil partly revoked and afterwards wholly revoked.

and when any will or codicil which shall be partly revoked and afterwards wholly revoked shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

PART XI.

Of the Construction of Wills.

Wording of will.

61. It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

Enquiries to determine questions as to object or subject of will.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court must inquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations.

(*a.*) A, by his will, bequeaths 1,000 rupees to his eldest son or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies.

(*b.*) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(*c.*) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

Misnomer or misdescription of object.

63. Where the words used in the will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of a legatee may be corrected by a description of him; and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(*a.*) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(*b.*) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(*c.*) The testator bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(*d.*) The testator gives his residuary estate to be divided among "his seven children," and proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(*e.*) The testator, having six grand-children, makes a bequest to "his six grand-children," and proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(*f.*) The testator bequeaths "1,000 rupees to each of the three children of A." At the date of the will A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

When words may be supplied.

64. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

Rejection of erroneous particulars in description of subject.

65. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous and the bequest shall take effect.

Illustrations.

(*a.*) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, but had no marsh-lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh-lands of the testator lying in L shall pass by the bequest.

(*b.*) The testator bequeaths to A "his zamíndári of Rámpúr." He had an estate at Rámpúr, but it was a taluq and not a zamíndári. The taluq passes by this bequest.

When part of description may not be rejected as erroneous.

66. If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

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Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under the sixty-fifth section are to be considered as struck out of the will.

Illustrations.

(*a.*) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

(*b.*) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X, comprising 1,000 bíghás of land." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

Extrinsic evidence admissible in case of latent ambiguity.

67. Where the words of the will are unambiguous, but it is found by extrinsic evidence that they admit of applications one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Illustrations.

(*a.*) A man, having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(*b.*) A, by his will, leaves to B "his estate called Sultánpur Khurd." It turns out that he had two estates called Sultánpur Khurd. Evidence is admissible to show which estate was intended.

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

68. Where there is an ambiguity or deficiency on the face of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations.

(*a.*) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under the seventy-sixth section.

(*b.*) A bequeaths 1,000 rupees to , leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(*c.*) A bequeaths to B rupees, or "his estate of ." Evidence is not admissible to show what sum or what estate the testator intended to insert.

Meaning of clause to be collected from entire will.

69. The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a codicil is to be considered as part of the will.

Illustrations.

(*a.*) The testator gives to B a specific fund or property at the date of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life and after his decease in B; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(*b.*) Where a testator, having an estate one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said, "I give Black Acre to B and all the rest of my estate to A."

When words may be understood in restricted sense, and when in sense wider than usual.

70. General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

Illustrations.

(*a.*) A testator gives to A "his farm in the occupation of B," and to C "all his marsh-lands in L." Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in L. The general words, "all his marsh-lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(*b.*) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons and chest of clothes, and to his friend A (a shipmate) his red box, clasp-knife and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(*c.*) A, by his will, bequeathed to B all his household furniture, plate, linen, china, books, pictures and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest, B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

Which of two possible constructions preferred.

71. Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

No part rejected, if it can be reasonably construed.

72. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

Interpretation of words repeated in different parts of will.

73. If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

Testator's intention to be effectuated as far as possible.

74. The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

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The last of two inconsistent clauses prevails.

75. Where two clauses or gifts in a will are irreconcileable, so that they cannot possibly stand together, the last shall prevail.

Illustrations.

(*a.*) The testator by the first clause of his will leaves his estate of Rámnagar "to A," and by the last clause of his will leaves it "to B and not to A." B shall have it.

(*b.*) If a man at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition shall prevail.

Will or bequest void for uncertainty.

76. A will or bequest not expressive of any definite intention is void for uncertainty.

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Illustration.

If a testator says—"I bequeath goods to A"; or "I bequeath to A"; or "I leave to A all the goods mentioned in a schedule," and no schedule is found; or "I bequeath money,' 'wheat,' 'oil,'" or the like, without saying how much, this is void.

77. The description contained in a will, of property the subject of gift, shall, unless a contrary intention appear by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

Words describing subject refer to property answering description at testator's death.

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82. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.

Bequest without words of limitation.

83. Where property is bequeathed to a person with a bequest in the alternative to another person or to a class of persons, if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect; but if he be then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

Bequest in alternative.

Illustrations.

(*a.*) A bequest is made to A or to B. A survives the testator. B takes nothing.

(*b.*) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(*c.*) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(*d.*) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(*e.*) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.

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84. Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

Effect of words describing a class added to bequest to a person.

Illustrations.

(*a.*) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors and administators.

In each of these cases, A takes the whole interest which the testator had in the property.

(*b.*) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

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85. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Bequest to class of persons under general description only.

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88. Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first, if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will:—

Rules of construction where will purports to make two bequests to same person.

First.—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will and again in a codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

Third.—Where two legacies of unequal amount are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

***Explanation.*—In the four last rules, the word "will" does not include a codicil.**

Illustrations.

(*a.*) A having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the will concludes with the words "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal.

(*b.*) A having one diamond-ring, which was given him by B, bequeathed to C the diamond-ring which was given him by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond-ring which was given him by B. C can claim nothing except the diamond-ring which was given to A by B.

(*c.*) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, in the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(*d.*) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(*e.*) A, by his will, bequeaths to B 5,000 rupees, and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(*f.*) A, by one codicil to his will, bequeaths to B 5,000 rupees, and by another codicil, bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(*g.*) A, by his will, bequeaths "500 rupees to B because she was his nurse," and in another part of the will bequeaths 500 rupees to B "because she went to England with his children." B is entitled to receive 1,000 rupees.

(*h.*) A, by his will, bequeaths to B the sum of 5,000 rupees and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(*i.*) A, by his will, bequeaths to B the sum of 5,000 rupees and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and take a contingent interest in another sum of 5,000 rupees.

89. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Constitution of residuary legatee.

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Illustrations.

(*a.*) A makes her will, consisting of several testamentary papers, in one of which are contained the following words:—"I think there will be something left, after all funeral expenses, &c., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(*b.*) A makes his will, with the following passage at the end of it:—"I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure." B is constituted the residuary legatee.

(*c.*) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

90. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Property to which residuary legatee entitled.

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91. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and, if he dies without having received it, it shall pass to his representatives.

Time of vesting of legacy in general terms.

92. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appears by the will that the testator intended that it should go to some other person.

In what case legacy lapses.

In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(*a.*) The testator bequeaths to B "500 rupees which B owes him." B dies before the testator; the legacy lapses.

(*b.*) A bequest is made to A and his children. A dies before the testator or happens to be dead when the will is made. The legacy to A and his children lapses.

(*c.*) A legacy is given to A, and in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(*d.*) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator. B survives the testator. The bequest to B takes effect.

(*e.*) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(*f.*) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

Legacy does not lapse if one of two joint legatees die before testator.

Illustration.

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

94. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Effect of words showing testator's intention that legatees shall take distinct shares.

Illustration.

A sum of money is bequeathed to A, B and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

95. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.

When lapsed share goes as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

96. Where a bequest shall have been made to any *son or other legitimate lineal male descendant* of the testator, and the legatee shall die in the lifetime of the testator, but any *legitimate* lineal *male* descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

When bequest to testator's lineal descendant does not lapse on his death in testator's lifetime.

Illustration.

A makes his will, by which he bequeaths a sum of money to his son B for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his will whereby he bequeaths all his property to his widow D. The money goes to D.

97. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

Bequest to A for benefit of B does not lapse by A's death.

98. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

Survivorship in case of bequest to described class.

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Illustrations.

(*a.*) A bequeaths 1,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D and E. E died after the date of the will, but for the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(*b.*) A bequeaths a legacy to the children of B. At the time of the testator's death, B has no children. The bequest is void.

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PART XII.

OF VOID BEQUESTS.

99. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Bequest to person by particular description, who is not in existence at testator's death.

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Illustrations.

(*a.*) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator B has no son. The bequest is void.

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101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease.

Rule against perpetuity.

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102. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the last preceding section, such bequest shall be wholly void.

Bequest to a class, some of whom may come under rules in section 101.

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103. Where a bequest is void by reason of any of the rules contained in the *two* last preceding sections, any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void.

Bequest to take effect on failure of bequest void under section 101 or 102.

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104. A direction to accumulate the income arising from any property shall be void; and the property shall be disposed of as if no accumulation had been directed.

Effect of direction for accumulation.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death;

and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(*a.*) The will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal, together with the accumulations, shall then be divided between A, B and C. A, B and C are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(*b.*) The will directs that 10,000 rupees shall be invested and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(*c.*) The will directs that the rents of the farm of Sultánpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living, named B. B shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

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(*e.*) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the will, but in consequence of B's minority.

PART XIII.

OF THE VESTING OF LEGACIES.

106. Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy.

Date of vesting of legacy when payment or possession postponed.

And in such cases the legacy is from the testator's death said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Illustrations.

(*a.*) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(*b.*) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(*c.*) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(*d.*) A fund is bequeathed to A until B attains the age of 18, and then to B. The legacy to B is vested in interest from the testator's death.

(*e.*) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(*f.*) A fund is bequeathed to A, B and C in equal shares, to be paid to them on their attaining the age of 18 respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B and C, subject to be devested in case A, B and C shall all die under 18, and upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

107. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

Date of vesting when legacy contingent upon specified uncertain event.

A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Illustrations.

(*a.*) A legacy is bequeathed to D in case A, B and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B and C all die under 18, or one of them attains that age.

(*b.*) A sum of money is bequeathed to A "in case he shall attain the age of 18," or, "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(*c.*) An estate is bequeathed to A for life, and after his death to B, if B shall then be living; but if B shall not be then living, to C. A, B and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

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(*d.*) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(*e.*) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that, if she shall not attain 18, or marry under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy, although she may have married under 18 without the consent of B.

(*f.*) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfiled by A's marrying.

(*g.*) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of Insolvent Debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(*h.*) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(*i.*) A leaves his farm of Sultánpur Khurd to B, if B shall convey his own farm of Sultánpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(*j.*) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent, until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence, within that period, of an event which makes the fulfilment of the condition impossible.

(*k.*) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(*l.*) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(*m.*) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

108. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Vesting of interest in bequest to such members of a class as shall have attained particular age.

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PART XIV.

OF ONEROUS BEQUESTS.

109. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Onerous bequest.

Illustration.

A having shares in (X), a prosperous joint stock company, and also shares in (Y), a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

110. Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

One of two separate and independent bequests to same person may be accepted, and other refused.

Illustration.

A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not by this refusal forfeit the money.

PART XV.

OF CONTINGENT BEQUESTS.

111. Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable.

Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.

Illustrations.

(*a.*) A legacy is bequeathed to A, and in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(*b.*) A legacy is bequeathed to A, and in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

(*c.*) A legacy is bequeathed to A when and if he attains the age of 18, and in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(*d.*) A legacy is bequeathed to A for life and after his death to B, and, "in case of B's death without children," to C. The words "in case of B's death without children" are to be understood as meaning in case B shall die without children during the lifetime of A.

(*e.*) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A."

112. Where a bequest is made to such of certain persons as shall be surviving at some period but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the will.

Bequest to such of certain persons as shall be surviving at some period not specified.

Illustrations.

(*a.*) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(*b.*) Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

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(*d.*) Property is bequeathed to A for life, and after his death to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

PART XVI.

OF CONDITIONAL BEQUESTS.

113. A bequest upon an impossible condition is void.

Bequest upon impossible condition.

Illustrations.

(*a.*) An estate is bequeathed to A on condition that he shall walk one hundred miles in an hour. The bequest is void.

(*b.*) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

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114. A bequest upon a condition the fulfilment of which would be contrary to law or to morality is void.

Bequest upon illegal or immoral condition.

Illustrations.

(*a.*) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(*b.*) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

115. Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Fulfilment of condition precedent to vesting of legacy.

Illustrations.

(*a.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(*b.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(*c.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

(*d.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(*e.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(*f.*) A makes his will, whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(*g.*) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

116. Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Bequest to A and on failure of prior bequest, to B.

Illustrations.

(*a.*) A bequeaths a sum of money to his own children surviving him, and if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(*b.*) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

117. Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

When second bequest not to take effect on failure of first.

Illustration.

A makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

118. A bequest may be made to any person with the condition superadded that in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or, that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.

Bequest over, conditional upon happening or not happening of specified uncertain event.

In each case the ulterior bequest is subject to the rules contained in sections 107, 108, 109, 110, 111, 112, 113, 114, 116, 117.

Illustrations.

(*a.*) A sum of money is bequeathed to A, to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be devested and to go to B in case A shall die under 18.

(*b.*) An estate is bequeathed to A with a proviso that, if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

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(*d.*) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money and the representative of B takes the other half.

(*e.*) A bequeaths to B the interest of a fund for life, and directs the fund to be divided, at her death, equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

119. An ulterior bequest of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Condition must be strictly fulfilled.

Illustrations.

(*a.*) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(*b.*) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(*c.*) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that, if A dies under 18, or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

120. If the ulterior bequest be not valid, the original bequest is not affected by it.

Original bequest not affected by invalidity of second.

Illustrations.

(*a.*) An estate is bequeathed to A for his life, with a condition superadded that if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will.

(*b.*) An estate is bequeathed to A for her life, and if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(*c.*) An estate is bequeathed to A, [illegible] marries [illegible]

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the testator's death, had not had a son. The bequest over is void under section 92, and A is entitled to the estate during his life.

121. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.

Illustrations.

(*a.*) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood; he loses his life-interest in the estate.

(*b.*) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(*c.*) An estate is bequeathed to A, provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(*d.*) An estate is bequeathed to A, with a proviso that, if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(*e.*) A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

122. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the one hundred and seventh section.

Such condition must not be invalid under section 107.

123. Where a bequest is made with a condition superadded that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect, but no time is specified for the performance of the act, if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Result of legatee rendering impossible or indefinitely postponing act for which no time specified and on non-performance of which subject-matter to go over.

Illustrations.

(*a.*) A bequest is made to A with a proviso that, unless he enters the army, the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(*b.*) A bequest is made to A with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

124. 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, such 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 shall be requisite to make up for the delay caused by such fraud.

Performance of condition, precedent or subsequent, within specified time.

Further time in case of fraud.

PART XVII.

Of Bequests with directions as to application or enjoyment.

125. Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Direction that funds be employed in particular manner following absolute bequest of same to or for benefit of any person.

Illustration.

A sum of money is bequeathed towards purchasing a country-residence for A, or to purchase an annuity for A, or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

126. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.

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127. Where a testator does not absolutely bequeath a fund so as to sever it from his own estate, but gives it for certain purposes and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Bequest of fund for certain purposes, some of which cannot be fulfilled.

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PART XVIII.

Of Bequests to an Executor.

128. If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will or otherwise manifests an intention to act as executor.

Legatee named as executor cannot take unless he shews intention to act as executor.

Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.

PART XIX.

Of Specific Legacies.

129. Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Specific legacy defined.

The Khojá Succession Bill, 1884.

(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

Illustrations.

(*a.*) A bequeaths to B—

"the diamond-ring presented to him by C:"

"his gold chain:"

"a certain bale of wool:"

"a certain piece of cloth:"

"all his household-goods, which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death:"

"the sum of 1,000 rupees in a certain chest:"

"the debt which B owes him:"

"all his bills, bonds and securities belonging to him lying in his lodgings in Calcutta:"

"all his furniture in his house in Calcutta:"

"all his goods on board a certain ship then lying in the river Hughly:"

"2,000 rupees which he has in the hands of C:"

"the money due to him on the bond of D:"

"his mortgage on the Rámpur factory:"

"one-half of the money owing to him on his mortgage of Rámpur factory:"

"1,000 rupees being part of a debt due to him from C:"

"his capital stock of 1,000 *l.* in East India stock:"

"his promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan:"

"all such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company:"

"all the wine which he may have in his cellar at the time of his death:"

"such of his horses as B may select:"

"all his shares in the Bank of Bengal:"

"all the shares in the Bank of Bengal which he may possess at the time of his death:"

"all the money which he has in the 5½ per cent. loan of the Government of India:"

"all the Government-securities he shall be entitled to at the time of his decease."

Each of these legacies is specific.

(*b.*) A having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B.

The legacy is specific.

(*c.*) A having property at Benares, and also in other places, bequeaths to B all his property at Benares.

The legacy is specific.

(*d.*) A bequeaths to B—

his house in Calcutta:

his zamíndárí of Rámpur:

his taluq of Rámnagar:

his lease of the indigo-factory of Salkya:

an annuity of 500 rupees out of the rents of his zamíndárí of W.

A directs his zamíndárí of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

(*e.*) A by his will charges his zamíndárí of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamíndárí to D. Each of these bequests is specific.

(*f.*) A bequeaths a sum of money—

to buy a house in Calcutta for B:

to buy an estate in zila Faridpur for B:

to buy a diamond-ring for B:

to buy a horse for B:

to be invested in shares in the Bank of Bengal for B:

to be invested in Government-securities for B.

A bequeaths to B—

"a diamond-ring:"

"a horse:"

"10,000 rupees worth of Government securities:"

"an annuity of 500 rupees:"

"2,000 rupees, to be paid in cash:"

"so much money as will produce 5,000 rupees 4 per cent. Government-securities."

These bequests are not specific.

(*g.*) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England.

No one of these legacies is specific.

Bequest of sum certain where stocks, &c., in which invested are described.

130. Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds or securities in which it is invested are described in the will.

Illustration.

A bequeaths to B—

"10,000 rupees of his funded property:"

"10,000 rupees of his property now invested in shares of the East Indian Railway Company:"

"10,000 rupees at present secured by mortgage of Rámpur factory."

No one of these legacies is specific.

Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.

131. Where a bequest is made in general terms of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Illustration.

A bequeaths to B 5,000 rupees 5 per cent. Government securities. A had at the date of the will five per cent. Government securities for 5,000 rupees.

The legacy is not specific.

Bequest of money where not payable until part of testator's property disposed of in certain way.

132. A money-legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Illustrations.

A bequeaths to B 10,000 rupees, and directs that this legacy shall be paid as soon as A's property in India shall be realized in England.

The legacy is not specific.

When enumerated articles not deemed specifically bequeathed.

133. Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

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Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

136. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

The Khojá Succession Bill, 1884.

(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

PART XX.

Of Demonstrative Legacies.

Demonstrative legacy defined.

137. Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that—

where specified property is given to the legatee, the legacy is specific;

where the legacy is directed to be paid out of specified property, it is demonstrative.

Illustrations.

(*a.*) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific; the legacy to C is demonstrative.

(*b.*) A bequeaths to B—

"ten bushels of the corn which shall grow in his field of Greenacre:"

"80 chests of the indigo which shall be made at his factory of Rámpur:"

"10,000 rupees out of his five per cent. promissory notes of the Government of India:"

an annuity of 500 rupees "from his funded property:"

"1,000 rupees out of the sum of 2,000 rupees due to him by C."

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his taluq of Rámnagar.

A bequeaths to B—

"10,000 rupees out of his estate at Rámnagar," or charges it on his estate at Rámnagar:

"10,000 rupees, being his share of the capital embarked in a certain business."

Each of these bequests is demonstrative.

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

138. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

Illustration.

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

PART XXI.

Of Ademption of Legacies.

Ademption explained.

139. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is ademed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the will.

Illustrations.

(*a.*) A bequeaths to B—

"the diamond-ring presented to him by C:"

"his gold chain:"

"a certain bale of wool:"

"a certain piece of cloth:"

"all his household-goods which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death."

A, in his lifetime,

sells or gives away the ring;
converts the chain into a cup:
converts the wool into cloth:
makes the cloth into a garment:
takes another house into which he removes all his goods

Each of these legacies is ademed.

(*b.*) A bequeaths to B—

"the sum of 1,000 rupees in a certain chest:"

"all the horses in his stable."

At the death of A, no money is found in the chest, and no horses in the stable.

The legacies are ademed.

(*c.*) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned.

The legacy is ademed.

Non-ademption of demonstrative legacy.

140. A demonstrative legacy is not ademed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall in such case be paid out of the general assets of the testator.

Ademption of specific bequest of right to receive something from third party.

141. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is ademed.

Illustrations.

(*a.*) A bequeaths to B—

"the debt which C owes him:"

"2,000 rupees which he has in the hands of D:"

"the money due to him on the bond of E:"

"his mortgage on the Rámpur factory."

All these debts are extinguished in A's lifetime, some with and some without his consent.

All the legacies are ademed.

(*b.*) A bequeaths to B—

"his interest in certain policies of life-assurance."

A in his lifetime receives the amount of the policies. The legacy is ademed.

Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.

142. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum received.

Illustration.

A bequeaths to B "the debt due to him by C." The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

Ademption *pro tanto* by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.

143. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the ex-

The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

tent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Illustration.

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and testator having received portion of that fund, remainder insufficient to pay both legacies.

144. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee, if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

Ademption where stock, specifically bequeathed, does not exist at testator's death.

145. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

Illustration.

A bequeaths to B—

"his capital stock of 1,000*l.* in East India Stock:"

"his promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan."

A sells the stock and the notes.

The legacies are adeemed.

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

146. Where stock which has been specifically bequeathed does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration.

A bequeaths to B—

"his 10,000 rupees in the 5½ per cent. loan of the Government of India."

A sells one-half of his 10,000 rupees in the loan in question.

One-half of the legacy is adeemed.

Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.

147. A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud or without the knowledge or sanction of the testator.

Illustrations.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house to save them from destruction by fire, before they are brought back.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

When removal of thing bequeathed does not constitute ademption.

148. The removal of the thing bequeathed from the place in which it is stated in the will to be situated does not constitute an ademption where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations.

A bequeaths to B all the bills, bonds and other securities for money belonging to him then lying in his lodgings in Calcutta. At the time of his death these effects had been removed from his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the river Hugli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

When thing bequeathed is a valuable to be received by testator from third person, and testator himself, or his representative, receives it.

149. Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption;

but if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C and sets it apart from the general mass of his property. The legacy is not adeemed.

Change by operation of law of subject of specific bequest between date of will and testator's death.

150. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent. loan of the Government of India."

The securities for the 5½ per cent. loan are converted during A's lifetime into 5 per cent. stock.

A's bequeaths to B the sum of 2,000*l.* invested in consols in the names of trustees for A.

The sum of 2,000*l.* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India which he has power under his marriage settlement to dispose of by will. Afterwards in A's lifetime, the fund is converted into consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

Change of subject without testator's knowledge.

151. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration.

A bequeaths to B "all his 3 per cent. consols." The consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India stock. This legacy is not adeemed.

Stock specifically bequeathed, lent to third party on condition that it be replaced.

152. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

Stock specifically bequeathed, sold but replaced and belonging to testator at his death.

153. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

PART XXII.

Of the Payment of Liabilities in respect of the subject of a Bequest.

Non-liability of executor to exonerate specific legatees.

154. Where property specifically bequeathed is subject at the death of the testator to any pledge, lien or incumbrance, created by the testator himself or by any person under whom he claims, then, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

Illustrations.

(*a.*) A bequeaths to B the diamond-ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(*b.*) A bequeaths to B a zamíndárí which at A's death is subject to a mortgage for 10,000 rupees, and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed to be at cost of his estate.

155. Where anything is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations.

(*a.*) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

(*b.*) A having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically.

156. Where there is a bequest of any interest in immoveable property, in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Illustration.

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

Exoneration of specific legatee's stock in joint stock company.

157. In the absence of any direction in the will where there is a specific bequest of stock in a joint stock company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate;

but if any call or other payment shall, after the testator's death become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest.

Illustrations.

(*a.*) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(*b.*) A has agreed to take 50 shares in an intended joint stock company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(*c.*) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(*d.*) A bequeaths to B his shares in a joint stock company. B accepts the bequest. Afterwards the affairs of the company are wound up and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(*e.*) A is the owner of ten shares in a railway company. At a meeting held during his lifetime a call is made of 3*l.* per share payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

PART XXIII.

Of Bequests of Things described in general terms.

Bequest of thing described in general terms.

158. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Illustrations.

(*a.*) A bequeaths to B *a* pair of carriage-horses, or *a* diamond-ring. The executor must provide the legatee with such articles, if the state of the assets will allow it.

The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

(*b.*) A bequeaths to B "*his* pair of carriage-horses." A had no carriage-horses at the time of his death. The legacy fails.

PART XXIV.

Of Bequests of the Interest or Produce of a Fund.

159. Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Bequest of interest or produce of fund.

Illustrations.

(*a.*) A bequeaths to B the interest of his five per cent. promissory notes of the Government of India. There is no other clause in the will affecting those securities. B is entitled to A's five per cent. promissory notes of the Government of India.

(*b.*) A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life and C is entitled to the notes upon B's death.

(*c.*) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

PART XXV.

Of Bequests of Annuities.

160. Where an annuity is created by will, the legatee is entitled to receive it for his life only unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Annuity created by will payable for life only, unless contrary intention appears by will.

Illustrations.

(*a.*) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(*b.*) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(*c.*) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

161. Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him or to receive the money appropriated for that purpose by the will.

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally or where money bequeathed to be invested in purchase of annuity.

Illustrations.

(*a.*) A by his will directs that his executors shall out of his property purchase an annuity of 1,000 rupees for B. B is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(*b.*) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B and C survive the testators. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

162. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

Abatement of annuity.

163. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

Where gift of annuity and residuary gift, whole annuity to be first satisfied.

PART XXVI.

Of Legacies to Creditors and Portioners.

164. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

Creditor *primâ facie* entitled to legacy as well as debt.

165. Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

Child *primâ facie* entitled to legacy as well as portion.

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

166. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

No ademption by subsequent provision for legatee.

Illustrations.

(*a.*) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(*b.*) A bequeaths 40,000 rupees to B, his orphan-niece, whom he had brought up from her infancy. Afterwards on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVII.

Of Election.

167. Where a man, by his will, professes to dispose of something which he has no right to dispose of, belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the will.

Circumstances in which election takes place.

the person to whom the thing

168. The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

Devolution of interest relinquished by owner.

The Khojá Succession Bill, 1884.
(Schedule.—Portions of the Indian Succession Act (X of 1865) modified for application to Wills made by Khojás.)

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Testator's belief as to his ownership immaterial.

Illustrations.

(*a.*) The farm of Sultánpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultánpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(*b.*) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(*c.*) A bequeaths to B 1,000 rupees, and to C an estate which will, under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(*d.*) A, a person of the age of 18 domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and, subject thereto, devises and bequeaths to B "all his property, whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Bequest for man's benefit how regarded for purpose of election.

Illustration.

The farm of Sultánpur Khurd being the property of B, A bequeathed it to C, and bequeathed another farm called Sultánpur Buzurg to his own executors, with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultánpur Khurd in opposition to it.

171. A person taking no benefit directly under the will, but deriving a benefit under it indirectly, is not put to his election.

Person deriving benefit indirectly not put to election.

Illustration.

The lands of Sultánpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultánpur to B, and 1,000 rupees to C. C dies intestate shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultánpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultánpur in opposition to the will.

172. A person who in his individual capacity takes a benefit under the will may in another character elect to take in opposition to the will.

Person taking in individual capacity under will may in other character elect to take in opposition.

Illustration.

The estate of Sultánpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultánpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultánpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

Exception to the six last Rules.—Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee, which is also disposed of by the will, if the legatee accepts that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Illustration.

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultánpur during her life.

A by his will bequeaths to his wife an annuity of 200*l.* during her life, in lieu of her interest in the estate of Sultánpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l.* The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l.*

173. Acceptance of a benefit given by the will constitutes an election by the legatee to take under the will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

When acceptance of benefit given by will constitutes election to take under will.

Illustrations.

(*a.*) A is owner of an estate called Sultánpur Khurd, and has a life-interest in another estate called Sultánpur Buzurg, to which, upon his death, his son B will be absolutely entitled. The will of A gives the estate of Sultánpur Khurd to B, and the estate of Sultánpur Buzurg to C. B, in ignorance of his own right to the estate of Sultánpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultánpur Khurd. B has not confirmed the bequest of Sultánpur Buzurg to C.

(*b.*) B, the oldest son of A, is the possessor of an estate called Sultánpur. A bequeaths Sultánpur to C, and to B the residue of A's property. B, having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultánpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultánpur to C.

174. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

Presumption arising from enjoyment by legatee for two years.

175. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Confirmation of bequest by act of legatee.

Illustration.

A bequeaths to B an estate to which C is entitled and to C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election;

and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

When testator's representatives may call upon legatee to elect.

Effect of non-compliance.

177. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

Postponement of election in case of disability.

STATEMENT OF OBJECTS AND REASONS.

THE Khojás are members of a sect which was originally Hindu but was converted to Muhammadanism about 400 years ago. They still, however, as has been more than once held by the highest Court in the Bombay Presidency, retain their former law to such an extent in matters connected with property and succession that it is to be presumed to apply to them until the contrary is shown. This state of things has at times given rise to great difficulties in litigation between Khojás.

2. In the case of *Hirbai* v. *Gorbai*, 12 Bom. High Court Rep. 294, which appears to have occupied the Lower Court for twenty-four sitting days and the Appellate Court for four days, Sir Michael Westropp, C. J., after describing the state of the law, observed as follows:—

"It is, however, evident that the Khojás are not as firmly bound in matters of succession and inheritance by the Hindu law as Muhammadans proper are by the Muhammadan law and the Hindus by the Hindu law, and hence it is that it would not be reasonable to require such stringent proof of a custom of inheritance amongst them differing from ordinary Hindu law as from a Hindu.

"Now, it is manifest that such a state of the law must greatly encourage litigation, and we cannot help thinking that it would be most desirable that the Government should take steps, as was done in the case of the Pársís, to ascertain the views of the majority of the community on the subject of succession, and should then pass an enactment giving effect to those views. Unanimity, of course, could not be expected, but the rules which were found generally to prevail might be made law; and though the religious differences existing among members of the Khojá caste might create some difficulty, it would not, we think, be insuperable."

3. The Government of Bombay, acting upon this suggestion, appointed about the end of the year 1878 a Commission consisting of four gentlemen taken from the Shia division of the Khojás, which acknowledged His Highness the late Ágha Khán as its spiritual superior, one taken from the Sunni division, and Mr. Spencer, Acting First Judge of the Court of Small Causes, with the Hon'ble Mr. Justice Melvill, of the Bombay High Court, as president.

The Commission took the greatest pains to inform themselves of the customs and views of both divisions of the Khojá sect in the Presidency of Bombay and elsewhere, and after much consideration and discussion agreed upon a draft Bill, subject to a dissent on a few specific points which was signed by His Highness Aghá Alí Sháh, son of His Highness the late Ághá Khán, and Mr. Dhurrumsey Poonjabhoy but not by Mr. Jairajbhoy Peerboy and Mr. Rahimtula Syance, the two other Shia members of the Commission. That draft, having been submitted to the Government of Bombay by the president on the 23rd of December, 1879, and approved of by that Government, was forwarded to the Government of India, and forms the basis of the present Bill.

4. It will be convenient to refer to the provisions of the present Bill as nearly as possible in their order, noticing in their proper place the few points in regard to which His Highness Ágha Alí Sháh and Mr. Dhurrumsey Poonjabhoy differed from the majority of the Commission, and the points of substantive importance in which the present Bill deviates from the draft framed by the Commission.

5. The first provision calling for notice is section 2, which defines the application of the Act—a matter which was not clearly provided for in the Bill prepared by the Commission. The main enactment of the section is that succession to the property, whether moveable or immoveable, in British India of a Khojá dying on or after the first day of January, 1885, shall be regulated by the rules contained in the Act wherever he may have had his domicile at the time of his death. So far as regards immoveable property, this provision coincides with section 5 of the Indian Succession Act, but, as regards moveable property, it involves an important deviation from that section, inasmuch as it applies the Act to all successions to such property though the deceased person may have been domiciled outside British India at the time of his death.

As the rule, which makes the law of the domicile of a deceased person regulate the succession to his moveable property, is not merely the rule of the Indian Succession Act but has obtained very general acceptance elsewhere, it seems desirable to state the reasons which have led the Government of India to think that it is not suitable to the Khojá community.

6. The choice as regards succession to moveable property appears to lie between the law of the domicile of the deceased and the law of the *situs* of the assets. The objections urged against the latter in Western countries are chiefly that a man's moveables are apt to be scattered over many jurisdictions each having a readily ascertainable law of its own, and that accordingly, if the law of the *situs* is made applicable to them, his estate will be broken up into many fragments, all governed by different laws; that a man's moveables may change their place; that the most important class of them, goods employed in commerce, are constantly changing their place; and that accordingly, if the law of the *situs* is applied, it will be impossible for him to foresee the particular law under which they will fall upon his death; and lastly, that the rule of the law of the *situs* does not clearly provide for that portion of the assets which consists of debts or other obligations existing in favour of the deceased. To avoid these difficulties it has been

generally agreed to adopt the law of the domicile of the deceased for the whole of his moveable estate. Various attempts have been made to rest this rule on some *á priori* principle; but it would seem to have had its actual origin in mere considerations of convenience.

7. Looking to the arguments by which it is supported, and to the peculiar circumstances of the Khojá community, it is questionable, to say the least, whether such a rule would meet the requirements of their case. The places beyond the limits of British India, as, for example, Kutch, the Persian Gulf and Zanzibar, in which any considerable number of Khojás is to be found have no law such as can properly be called a territorial law of succession. The tribunals in such places, in so far as they make any rational attempt to apply a law at all, would apply the personal law of the parties, and that in the case of Khojás is *ex hypothesi* altogether unsettled and unascertainable. There is thus in the case of Khojás domiciled out of British India practically speaking no law of the *situs* of the foreign assets to conflict with the law which would apply to the British Indian assets, and no law of the domicile to which recourse could be had; and, therefore, to give the law of the domicile a preference over the Indian law would be simply to substitute a congeries of indefinite and half-established customs for a law, to the application of which there could be no reasonable objection.

It may be added that, in the absence of a law of the domicile, the case is very analogous to those cases in which it is impossible to fix the domicile of the deceased, and the solution which Lord Alvanley appears to have suggested in a case of this latter class was to fall back, as is proposed in this case, on the law of the *situs* of the property; in other words, to put moveables on the same footing as immoveables.

8. If this solution is adopted, and the Indian law is applied to all moveables left by a deceased Khojá in British India, without regard to his domicile, and if, moreover, the same rule is applied, as it naturally would be, in cases arising in Consular jurisdictions in the Persian Gulf, Zanzibar and elsewhere, this further advantage will probably in time be gained, that the law in British India will come to be adopted as a personal law applicable to Khojás in all foreign States in this part of the world.

9. The above remarks apply equally to intestate and to testamentary succession. A question might indeed be raised as to whether a testamentary disposition made beyond the limits of British India should as regards its form be made absolutely subject to British Indian law; but, seeing that the effect of taking any other course would certainly be to admit oral dispositions, it seems clear that the risk of failures of justice will be on the whole less by subjecting completely to our law all dispositions, wherever made, of moveable property in British India.

10. In connection with the definitions it is convenient to notice one of the few important questions on which any difference of opinion has arisen, namely, the question as to the status to be assigned to a woman who is not a Khojá but who is legally married to a Khojá according to the rules of the Muhammadan law, and to her children by him.

The Khojás of the Sunni Jamát, though apparently unwilling to go so far as to recognize any other than a Khojá widow as entitled to inherit from her husband, proposed that the sons of a Khojá by a wife who is not a Khojá should have some share in the inheritance. To this the Khojás of the Shia Jamát would not agree, and the Commission ultimately adopted as a compromise the plan of assigning to the offspring of the marriages in question a status nominally intermediate between those of legitimacy and illegitimacy and giving them in the definition-clauses the designation of "alien sons", but allowing them nothing more than illegitimate sons in the later sections of their Bill. It is stated that the Khojás as a rule are very exclusive and rarely take wives from outside their own community, and so long as this state of things continues the mode in which this point is dealt with is not of great practical moment; but there is an important principle involved, against which even the compromise adopted by the Commission appears to the Government of India to offend. The exclusion of the non-Khojá wife from inheritance and the degradation of her sons to a position altogether lower than that of the legitimate son involves a view as to restrictions on marriage which, even though it may have obtained acceptance with a majority of the Khojá sect, and though the Government has no desire to interfere with it, it is manifestly undesirable to have affirmed by the legislature. The present Bill will accordingly be found to contain no reference either in its definition-clauses or elsewhere to the so-called "alien son." It defines "son" to be a legitimate son and leaves "widow" undefined, and then proceeds to declare the rights of sons and widows, trusting to the Courts to decide, as they will on principles lying outside the law of succession, who are legally entitled to the status of sons and widows.

11. Chapter II of the Bill deals with "succession to the undivided property of a male Khojá dying intestate," and in the previous chapter "undivided property" has been defined as meaning "a share in property belonging to an undivided family." The Bill prepared by the Commission purported to define the phrase "undivided family," but the definition proposed has on inquiry been found to be unsafe. The undivided family among the Khojás appears to come into existence chiefly in connection with trade, and would seem to be an institution of a peculiar nature, somewhat resembling the undivided family among the Hindus; but, on the other hand, it is clear, from the rules laid down in certain sections of the Bill prepared by the Commission, and from the papers submitted with that Bill, that it differs in important respects from the Hindu undivided family. What exactly it is, and when property is to be regarded as its undivided property, it is difficult to ascertain from the papers before the

Government of India; but, judging from the analogous case in Hindu law, it would seem that these are matters which it would be almost hopeless to attempt to define in an Act of the legislature; nor, does it appear to be necessary to define them in a Succession Act. It may well be assumed that a fundamental distinction which goes to the root of the family constitution, and which is not confined in its operation to matters of succession, but applies also *inter vivos*, is established outside this Bill. For these reasons, it has been thought best to make no attempt to define "undivided family" or "undivided property" in the present Bill.

12. It will be observed, on comparing Chapters II and III, that the only peculiarity connected with the intestate succession to undivided property is (section 6) that, in default of legitimate lineal male descendants of the intestate within the fourth degree, the property is equally divided among all the male members of the undivided family living at his death.

13. Chapter III of the Bill treats of "succession to the separate property of a male Khojá dying intestate," and the order of succession marked out in sections 7 to 20 will be found to be based on that of the Hindu law.

The subjoined statement has been prepared by the Hon'ble Mr. Melvill, the President of the Commission, with a view to showing at a glance the extent to which the two differ—

Order of succession according to Hindu law.	*Order of succession for Khojás proposed by the Bill.*
1. Sons.	1. Sons.
2. Grandsons.	2. Grandsons.
3. Great-grandsons.	3. Great-grandsons.
4. Widow.	4. Great-great-grandsons.
5. Daughters.	5. Father.
6. Daughters' sons.	6. Mother.
7. Mother.	7. Widow.
8. Father.	8. Daughters.
9. Brothers.	9. Daughters' sons. }
10. Half-brothers.	10. Brothers. }
11. Brothers' sons.	11. Sons' daughters.
12. Half-brothers' sons.	12. Brothers' sons.
13. Grandmother.	13. Half-brothers.
14. Sister (under the Mayukha).	14. Half-brothers' sons.
15. Grandfather.	15. Grandfather.
16. More distant relatives.	16. Grandmother.
	17. Paternal uncle.
	18. Sister.
	19. More distant relatives.

"It will be seen," Mr. Melvill observes, "that the only very noticeable point of difference is that among the Khojás the father and mother are elevated to a rank in the order of succession superior to that of the widow. This precedence of the mother has been judicially settled in the case of *Hirbai* v. *Gorbai**, already referred to; and although the Khojá members of the Commission were not unanimously in favour of the view taken in that case, they all agreed that, having once been judicially determined, the rule should not be disturbed."

* Reported 12 Bom. H. C. Rep., 294.

14. Section 20 of the present Bill differs in one important particular from the corresponding section (29) of the Bill prepared by the Commission.

The latter admitted to the succession only those of the "more distant relatives" of the intestate who were on the father's side, and confined it to such of them as are within the seventh degree of kindred. On failure of this limited class of distant kindred, section 42 gave the property "to the Jamát of that sect of the Khojás to which the intestate belonged at the time of his death, to be held and applied according to the customs of the said Jamát." Even this did not satisfy the two dissenting members of the Commission and some of the other adherents of His Highness the late Aghá Khán, who, as Imám, was the person chiefly interested in the succession of the Jamát. They contended that the Jamát should come in immediately after the nearer relations.

The Government of India, after fully considering this point in communication with the local authorities, have come to the conclusion that it is impossible to exclude the heirs of a deceased person in favour of any such institution as a "Jamát," or any person or authority representing such an institution. It is open to any Khojá who desires that his property should be devoted to any charitable or religious purpose, or should be enjoyed by any spiritual person for whom he entertains a special veneration, to dispose of his property by will or otherwise in accordance with law, but, if he dies intestate, it would be contrary to all established principles to enact that his property should devolve otherwise than upon his relatives.

15. Apart from this fundamental objection in point of principle, there appear to be practical objections to the proposal as formulated by the Commission. The Jamát is said to be an assembly in council of all the adult male members of the Khojá community of the place, and it is not unlikely that doubts would arise, in connection with matters of religious belief, residence, attendance at the Jamát, and so forth, as to the particular Jamát (if any) to which the deceased person belonged. Similar doubts might also arise as to who were the other persons actually belonging to the Jamát to which the deceased belonged, so as to take the property. There might further be doubts as to how the property of a deceased intestate Khojá is to be held,

and the objects to which it is to be applied. It is true that the section proposed by the Commission says that the property is to be held and applied "according to the customs of the said Jamát." But from a judgment of Sir J. Arnould in the case marginally noted, it would appear that there are no customs to look to. Though a Jamát collects large sums of money through its officers, it only does so on behalf of the Imám; the money collected is passed on to him; and if the Jamát wants any portion of it, even for the expenses of its Jamát-kháná (the council-hall or guildhall of the community), it can procure it only as a grant from the Imám. It appears to be absolutely in the discretion of the Imám to spend the money as he pleases, and as a matter of fact he spends a large portion of it, or at least is said by Sir J. Arnould to have done so at the time the judgment was delivered, on his own private purposes. Indeed, in a set of draft rules of succession for Shia Khojás submitted by His Highness Ágha Alí Sháh the succession of the Jamát is treated as the same thing with the succession of the Imám. The Jamát, therefore, does not seem to have any property or control over property, and it is not clear how there can be any custom governing the application of property by it. It has been argued that no such difficulties as those suggested ordinarily arise at present, but it would be clearly impossible to put the succession of the Jamát on a legislative basis without defining its conditions and incidents, and it would be equally impossible to place the property at the absolute disposal of any individual in whatever degree of veneration he might be held.

Dayá Muhammad and others versus *H. H. Aghá Khán and others* (page 323 of the Bombay High Court Reports, Vol. XII).

16. For these reasons section 20 of the present Bill extends the succession to relatives of the intestate both on the father's and on the mother's side without limit of degree, and it may be added that section 48 applies the ordinary rule, which makes the Crown the ultimate heir, in the rare case in which an owner of property may die intestate and leave no person entitled to succeed under the previous sections.

17. Section 21 is one of the leading sections of the Bill. It provides in effect that, when a female inherits under any of the foregoing sections, she shall, if certain near male relatives are living and are thus postponed to her, take the property only as "restricted owner"—a position to be presently explained at length. With this section should be read section 49, from which it will be seen that in other cases she takes the same interest in the property and has the same powers in respect of it as if she were a male.

18. Chapter IV treats of succession to the absolute property of a female Khojá dying intestate, that is to say, the succession to such of her property as belongs to her otherwise than as restricted owner. The provisions of this chapter call for no remark. Mr. Melvill states that they differ from the Hindu law but that they are approved by all classes of the Khojás, and are not, he thinks, open to any objection. The particulars in which they deviate from the Hindu law or the reasons for the deviations are not explained. They have been accepted by the Government of India as settled by the Commission, such details only being filled in after consultation with the local authorities as seemed necessary to give effect to what is understood to be the intention of those who framed them.

19. Chapter V, which treats of "property which a female takes as restricted owner and the further succession to the same," calls for more detailed notice.

It applies not only in the ordinary case of property taken by a female as restricted owner under Chapter III (*supra*, paragraph 17), but also in cases where she may take a similar interest in property under section 23 (2), section 24 (1), section 27 and section 39.

Its provisions are merely a development, with the requisite amplifications and with the addition of the necessary machinery, of the corresponding provisions of the Bill framed by the Commission. It has been settled in consultation with the local authorities and with a view to giving effect to what are understood to be the views of the Commission; but, having regard to the novelty and complication of the subject, it is not unlikely that when subjected to criticism it will be found susceptible of improvement in many particulars.

The limited estate taken by a Khojá female under this Bill resembles the estate taken by a Hindu widow, but there are many important differences between them. Mr. Melvill observes that the Khojá female estate is the more restricted of the two, but on this point he says the Khojás hold very strong views which he is of opinion must be respected.

20. In proceeding to notice the details of the chapter, the first point calling for attention is the phrase "restricted owner." It has been chosen merely on the ground that it is new and connotes nothing, and it is not unlikely that some more appropriate phrase may be suggested. The phrase "life-estate" and its correlative "reversion," used in the Bombay Bill, are not only open to the objection that ordinarily lies against all terms imported from another legal system, but further, as has been constantly observed of them in the case of the Hindu widow's estate, they suggest an altogether false analogy. The position, if it is necessary to illustrate it by reference to English law, is rather like that of a fee-simple estate subject to an executory devise.

21. As regards the attempt made in the Bill to define the estate, it will be observed that section 28 enacts that the female shall be absolutely entitled to the use of, and the income accruing from, the property during her life, and, except as otherwise provided by the Act, shall have all the other rights and powers of an absolute owner.

An objection has been taken to this on the ground that money saved by a widow from the income of the property should not belong to her absolutely but should go to her husband's heirs.

This contention is not based on any alleged actual practice, but is put forward merely as a "necessary consequence of the invariable custom" which limits the widow's interest in the *corpus* of her husband's property to the time during which she remains unmarried.

Now, not only is it not a necessary consequence of the custom in question, but it is, as admitted by the objectors themselves, in a certain sense illogical; for why should a person who has absolute power to dispose of the income as it comes in, in whatever way she pleases, be restricted from dealing with her savings from it?

Again, the only effect of adopting the proposed suggestion would, as the objectors themselves admit, generally be that the widow would squander the income as it came in; and, in the rare cases in which she allowed some of it to accumulate, the probability is that litigation would result from the difficulty of identifying the fund and separating it from the rest of her property. For these reasons the section has been allowed to stand.

22. Section 30 defines the obligations of the restricted owner as regards—

(*a*) the preservation of the substance of the property for those who are to come after her; and

(*b*) the protection of the title.

As regards "waste," it stands on a footing altogether peculiar in the case of the Hindu widow; and clause (*a*) of this section has been drawn with a view to placing it on a somewhat similar footing in the case of the restricted owner.

23. As regards the powers of alienation, in the limitations on which the restricted nature of the estate chiefly consists, the only powers of alienation for any time beyond the life of the restricted owner allowed to her by the Bill, besides a limited power of leasing conferred by section 29, are those specified in section 31, which runs as follows:—

"31. A female taking property as restricted owner shall have power to transfer the same, so that the transfer may have effect beyond her life, when, the income being insufficient, such transfer is necessary in order to raise money for any of the following purposes, namely:—

Restricted owner's power of transfer.

"(*a*) to discharge any of the obligations imposed by section 30;*

"(*b*) to discharge the debts of the absolute owner from whom the property descended;

"(*c*) to provide for the maintenance of any persons entitled under this Act to have their maintenance provided for out of the property, for the payment of any marriage expenses or funeral expenses payable under this Act out of the property, and for the performance of any ordinary family ceremonies; and

"(*d*) to support herself where she has no other sufficient means of support."

* *Viz.*, obligations to preserve the substance of the property and protect the title.

24. It has been urged by the two dissenting members of the Commission and by some other adherents of His Highness the Imám that a mother taking a restricted estate should have larger powers of alienation and that she or a widow taking a like estate should be empowered to alienate for religious objects; that is, as explained in the set of draft rules submitted by His Highness Aghá Alí Sháh, to give the property to the Imám; but, upon considering the arguments adduced and consulting the local authorities, the Government of India have determined to uphold the decision of the majority of the Commission, which is against the concession of any such powers.

25. In order to avoid as far as possible the great difficulties which arise in the case of a Hindu widow exceeding her power of alienation, an alienation in excess of the power has (section 29 of the Bill) been made absolutely void for any period beyond the restricted owner's life, except where the purchaser takes for consideration and without notice of the ownership being restricted. This, no doubt, standing alone, would place too great difficulties in the way of alienation; but sufficient relief will probably be afforded by the power to apply to a Court for sanction, which is given by section 32. It may be objected that it is undesirable to force people to resort to a Court in such matters; but the case is one of a choice of evils, and it is probably better that they should resort to the Court in every case where there is any room for doubt than run the risk of being involved in troublesome and expensive litigation later on.

A Court dealing with an application under section 32 is empowered (section 33) to accord its sanction to the transfer subject to the condition that the money thereby raised shall be paid into Court or to trustees appointed by the Court, and to give such further directions as it may think fit with a view to ensuring that the money shall be applied to the purpose for which it is raised, or that any balance that is not so applied shall be secured for the benefit of those entitled after the restricted owner.

26. It will be observed that no provision is made in the draft for alienation with the consent of the so-called "reversioners." This matter is one which gives rise to great difficulties in the case of the Hindu widow, and it seems impossible, having regard to the system of succession established by the Bill, to provide for it in any satisfactory manner. If provision had only to be made to meet the case of "reversioners" who claim under section 37 (1) and section 38 (3) by descent from the last absolute owner, the matter would be much simpler than in the case of the Hindu widow, inasmuch as these "reversioners" would always be known living persons or persons who would claim through them; but there are, besides these, the "reversioners" mentioned in section 38 (1) and (2), and it is thus impossible to fix upon any person whose consent would be sufficient.

27. Further, even if we were, as has been suggested, to waive this objection, and accept the consent of a merely presumptive "reversioner," there is another difficulty, namely, that the presumptive "reversioner" might (see section 39 of the Bill) be another restricted owner, possibly an old woman on the verge of the grave, whose prospect of succeeding would be extremely small. There might be several such persons intervening between the restricted owner and the first person who would take as absolute owner. We could hardly rest satisfied with anything short of the consent of this last person and all the intervening ones, and thus we should be landed in a considerable complication, leading in many cases to no very satisfactory result, inasmuch as the interest of the first person who would take as absolute owner, and to whose consent we would chiefly look, would often be of a remotely contingent nature. It is, of course, on economical grounds desirable to provide a means of freeing the property from the limited ownership, but the advantage would be dearly purchased if the basis of the purchaser's title were to be complicated in this way.

28. As regards the sale of property in execution of a decree against a restricted owner, it will be seen that the effect of section 34 of the Bill is that a person lending money for any of the purposes mentioned in section 31 can sell in execution nothing more than the so-called "life-interest" of the restricted owner, unless his loan is secured by a mortgage. The position of the restricted owner as regards anything beyond her so-called life-interest is, in fact, in this particular, somewhat similar to that of an English executor with power to charge the real estate. If it were otherwise, there might arise, in cases of execution for unsecured debts, the same difficult questions which the preceding sections are intended to shut out in cases of voluntary alienation.

29. It will be observed that, by sections 37 (2) and 38 (4) of the Bill the Crown is postponed to the general heirs of the restricted owner. This appears to be right, though it is gathered from the case of *The Collector of Masulipatam* v. *Cavaly Vencata Narrainapah* (8 Moo. I. A. 529),—this precise point was not there decided,—that it is otherwise in the case of a Hindu woman's estate.

30. Sections 35 and 36 in effect provide that the restricted owner shall represent the property in judicial proceedings and compromises of disputes and for the purposes of laws of limitation and prescription, so as to bind those who take after her.

31. Sections 37 to 39, which regulate the devolution of property after the death of the restricted owner, have been drawn with a view to carry out what is understood to be the intentions of the Commission.

Their main provisions are that—

(*a*) when the restricted owner dies unmarried, the property shall belong to the person to whom it would then have belonged if she had died before the absolute owner from whom it descended and it had descended under the Act without having been alienated, and in default of such person it shall descend as if the female were not a restricted owner; and

(*b*) when the restricted owner has been married, the property shall on her death go to certain of her descendants, and if there are no such descendants shall devolve as just stated.

32. From section 39 it will be seen, as already observed, that property may devolve upon two or more restricted owners in succession. This is to be regretted, but it seems to be an essential part of the scheme.

33. Section 40 regulates the legal relations arising where two or more widows of a deceased Khojá take his property together as restricted owners, and provides that there shall be a right of survivorship between them.

34. Section 41 provides that a widow marrying again after her husband's death shall not be entitled to take as restricted owner his property or any property of any of his lineal descendants which has descended to them from him, and that, if a widow taking any such property as restricted owner subsequently marries again, she shall be deemed for the purposes of certain sections of the chapter to have died. One effect of this latter provision is that the restricted ownership of the widow ceases on her re-marriage.

35. Coming now to Chapter VI, relating to the wills of Khojás, it will be observed that all matters connected with probate and letters of administration are in the case of Khojás, as in the

case of other persons not subject to the Indian Succession Act, left to be dealt with under the Probate and Administration Act, 1881. The result of this is that the matters remaining to be provided for under this chapter are in the main the same as those which are provided for by the Hindu Wills Act, 1870, as amended by the Act just mentioned; and, as a matter of fact, the specification of the sections of the Indian Succession Act made applicable to the wills of Khojás by this chapter is based on the specification contained in the Hindu Wills Act as cut down by the Probate and Administration Act, 1881. There are, however, some important differences between the two which call for explanation here.

36. The most important of these differences is connected with the limitation on the powers of testamentary disposition. The specification of the sections of the Indian Succession Act applicable to Hindus, &c., contained in the Hindu Wills Act comprises several sections which either confer, or assume the existence of, a power of disposition in favour of unborn persons, but the Act contains a proviso to the effect that nothing therein contained shall authorize any Hindu, &c., to create in property any interest which he could not previously have created, and the Calcutta High Court have held in the recent case of *Alangamonjori Dabee* v. *Sonamoni Dabee* (I. L. R. 8 Cal. 637) that the effect of that proviso is to cut down the power of disposition, which the sections in question confer or assume to exist, to the limits imposed on a testator by the Hindu law, that is to say, as held in the well-known *Tagore* case, to a mere power of disposition in favour of persons who are either in fact or in contemplation of law in existence at the death of the testator.

37. It will be seen, on reference to the report of *Alangamonjori Dabee's* case, that, though there was no difference of opinion in the Appellate Court which finally heard it, much difficulty arose from the form in which the Hindu Wills Act had been drafted, and that the learned Judge in the Court below had been led by this to take the opposite view. This being so, it was obvious that the drafting of the Hindu Wills Act could not be followed in this particular. Moreover, it was seen that to adopt this form of drafting would in a considerable number of cases expose the testamentary dispositions of Khojás to be called in question for reasons drawn or supposed to be drawn from the extremely vague and unsettled customary law now prevailing among them, and thus the object of the present measure, which is intended to supply a definite body of law, would be to a great extent defeated. It was accordingly resolved to enact directly either that a Khojá's power of testamentary disposition should be co-extensive with that allowed by the Indian Succession Act, or should be limited somewhat in accordance with the ruling in the *Tagore* case.

38. It was clear that the question as to which of these courses should be adopted stood on grounds altogether independent of those on which the perpetuity question among Hindus had been discussed. The considerations with reference to which it should, in the opinion of the Government of India, be decided will be best seen from the remarks made on referring it to the local authorities for opinion. It was observed that the point was one in regard to which there was no recognized definite rule among the Khojás, and that if, having regard to the family system of that sect and its requirements in this particular, it was considered that it would be desirable to confer upon Khojás a power of disposition as large as that conferred by the Succession Act, the Governor General in Council would be prepared to confer that power; that the circumstance that, in the absence of any other rule, the Courts presume the Hindu law to be applicable to Khojás, and so might possibly, if the question then arose, hold a Khojá testator limited by the rule in the *Tagore* case, ought not, in the opinion of the Governor General in Council, to be permitted to stand in the way of such legislation. "The Government of India," it was said, "has ever been reluctant to alter, by legislation, personal laws like those of the Hindus and Muhammadans, which are definitely ascertainable and are established on a religious or *quasi*-religious basis; but a rule of Hindu law, which is applied not as such, but merely by virtue of the presumption above referred to, in the absence of any other ascertainable rule, to persons who are by religion not Hindus but Mussulmans, stands in its application to such persons on a totally different footing; and, if it appears expedient to set it aside as regards them, there need be no hesitation about doing so. The rule of the *Tagore* case, assuming that it would at this moment be applied by the Courts to Khojás, is as applied to them no more sacred or immutable than any of the other rules of Hindu law which at this moment may be applicable to Khojás, but which will be modified by the Bill if it becomes law. No difficulty will, therefore, be raised here on this score."

If, on the other hand, it was observed, it should appear that the rule prohibiting dispositions in favour of unborn persons had, as a matter of fact, been recognised and observed among the Khojás, or if, there being no recognized rule or established practice either way, it should be considered that the powers of disposition allowed by the Succession Act were larger than were needed for the requirements of Khojás, it would probably be desirable to limit the power of disposition in some such way as it is limited by the Hindu law as interpreted in the *Tagore* case. The system of intestate succession established by the Bill was in certain respects a complicated one; and if to this were to be added a power of making complicated dispositions by will, it was to be feared that we should bring about, in regard to the property of this wealthy and important sect, a state of things which it was desirable if possible to avoid.

39. The reply of the local authorities was to the effect that, as far as appeared, there was no recognized definite rule among the Khojás bearing on the point; that it was unlikely that

any attempt had hitherto been made among them to create by will an interest in favour of an unborn person; that there was thus a *tabula rasa;* and that it was quite open to the legislature to legislate on the subject as it thought best without any fear of violating an existing custom or of running counter to any prejudice or desire of the Khojá community.

This being so, the Government of India have come to the conclusion that it is undesirable to confer on Khojás any power of testamentary disposition in favour of persons not in existence at the time of the testator's death; and accordingly all portions of the Indian Succession Act which confer, or assume the existence of, such a power have, as far as practicable, been omitted, a proviso at the same time being inserted to the effect that a bequest by a Khojá in favour of any person who has not come into existence at the death of the testator shall be void.

40. The remaining differences between this Bill and the Hindu Wills Act as regards the provisions of the Indian Succession Act applied by them are of less importance.

It may, however, be stated that the following additional provisions of the Succession Act have been made applicable, namely:—

(*a*) section 47, giving a father power to appoint a guardian by will—a power the existence of which was assumed by the Commission;

(*b*) sections 52 and 53, relating to privileged wills;

(*c*) section 84, which provides that, when property is bequeathed to a person and words are added which describe a class of persons but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole of the interest of the testator therein unless a contrary intention appears by the will;

(*d*) section 104, which limits directions for accumulation.

It should be added that section 187 of the Indian Succession Act, which provides that no right as executor or legatee can be established until a grant of probate or letters of administration is obtained, has been omitted for reasons similar to those which led to its being ultimately omitted from the Probate and Administration Act, 1881; and that sections 134 and 135, determining whether property bequeathed to two or more persons in succession should when its value is liable to decrease be retained in its original form, have been omitted, as it seems safer in this country to lay down no hard-and-fast rules on the subject.

41. The only other point calling for notice in connection with this chapter is that section 43, following the proviso to section 10 of the Transfer of Property Act, confers a power of bequeathing property to or for the benefit of a woman, so that she shall not have power to transfer or charge the same or her beneficial interest therein. The existence of such a power appears to have been assumed in the Bill prepared by the Commission.

43. Chapter VII, relating to maintenance and marriage and funeral expenses, calls for little notice. There was some obscurity about the corresponding provisions of the Bill prepared by the Commission, and this chapter has now been settled in accordance with what is understood from the local authorities to have been the original intention. It is believed that the only change of a substantive nature made here is in section 46, where provision has been made for the maintenance, &c., of a daughter while she remains unmarried. The chapter, however, will probably be found open to further amendment when it has been more fully considered.

43. Section 47, which provides for the recovery of sums due under this chapter, has been drawn with a view to precluding, as far as possible, the difficulties which have arisen under the Hindu law in regard to claims for maintenance, and in particular as to how far a person having a right to maintenance is entitled to follow the property of the deceased. As regards this last point, it has been thought best to place the claim for maintenance, &c., on the footing of a debt, postponing it, however, to debts proper. This will not absolutely remove all difficulty, but, by bringing the case within an existing class, it will avoid the creation of a new difficulty.

The 1st July, 1884.

C. P. ILBERT.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Report of the Select Committee on the Bill to amend and provide for the extension of the Northern India Taḳḳáví Act, 1879, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th July, 1884:—

WE, the undersigned Members of the Select Committee to which the Bill to amend and provide for the extension of the Northern India Taḳḳáví Act, 1879, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

From Secretary to Chief Commissioner, Coorg, No. 1661-I. 204, dated 5th February, 1884 [Printed Paper No. 1].
From Secretary to Government, Bombay, No. 1429, dated 14th February, 1884, and enclosures [Printed Papers No. 2].
From Secretary to Government, Bombay, No. 1558, dated 19th February, 1884, and enclosures [Printed Papers No. 3].
From Officiating Assistant Secretary to Chief Commissioner, Central Provinces, No. 811-29, dated 19th February, 1884, and enclosure [Printed Papers No. 4].
From Secretary to Government, Bombay, No. 1699, dated 23rd February, 1884, and enclosure [Printed Papers No. 5].
From Secretary to Government, Bombay, No. 1670, dated 23rd February, 1884, and enclosures [Printed Papers No. 6].
From Secretary to Chief Commissioner, British Burma, No. 441-42A., dated 21st February, 1884 [Printed Paper No. 7].
From Secretary to Government, North-Western Provinces and Oudh, No. 413, dated 29th February, 1884 [Printed Paper No. 8].
From Chief Secretary to Government, Madras, No. 630, dated 8th March, 1884, and enclosures [Printed Papers No. 9].
From Officiating Junior Secretary to Government, Panjáb, No. 110, dated 25th March, 1884, and enclosures [Printed Papers No. 10].
From Chief Commissioner, Ajmer-Merwára, No. 231, dated 2nd April, 1884, and enclosures [Printed Papers No. 11].
From Secretary for Birár to Resident, Haidarábád, No. 110G., dated 4th April, 1884, and enclosures [Printed Papers No. 12].
From Officiating Secretary to Chief Commissioner, Assam, No. 443, dated 19th April, 1884 [Printed Paper No. 13].
From Chief Secretary to Government, Madras, No. 1010, dated 24th April, 1884, and enclosure [Printed Papers No. 14].
From Officiating Secretary to Government, Bengal, No. 282T.R., dated 6th May, 1884, and enclosures [Printed Papers No. 15].

2. We have at the instance of the Government of Bombay made the Bill applicable by its own force to that Presidency, and repealed sections 4 and 5 of Act XV of 1880, the similar law at present in force there.

3. We have considered the objections taken by the British Indian Association to sections 5 and 6, but they appear to us to be based on a misapprehension as to the effect of those sections. The Association fear that a landlord's interest may be in some way affected by a sale for arrears of advances due by his tenant, but there is nothing in the Bill to warrant anything of the kind.

Section 6 relates merely to contribution between those taking the loan, and section 5, which provides for the recovery of arrears, does not enact that they shall be recoverable as if they were arrears of land-revenue due in respect of any particular land, but merely as if they were arrears of land-revenue due by the defaulter, and accordingly no charge is created over land even when the loan has been taken by its owner.

4. We have also considered the suggestion of the Government of the Panjáb that the lambardárs of a village should be empowered to engage for a loan on behalf of the whole proprietory body, but we do not think that it would be safe to confer any such power. As regards the inconvenience which it is suggested may arise "when it might be desirable to make a loan to a village-community as such" from requiring "the signature of each member of the community," we would observe that loans of the description contemplated by the Bill would, as a rule, be made not to village-communities as such but to individuals, and that when, with a view to having better security for the recovery of the money, it is proposed that a large number of persons should join and make themselves jointly and severally responsible for the aggregate of the loans to all, it would be comparatively immaterial whether a few more or a few less so joined.

We have, however, in order to facilitate the working of section 6, inserted words to make it clear that the signature required by that section may be affixed by an agent duly authorized.

5. The publication ordered by the Council has been made as follows :—

In English.

Gazette.	*Date.*
Gazette of India	19th and 26th January, and 2nd February, 1884.
Calcutta Gazette	23rd and 30th January, and 6th February, 1884.
North-Western Provinces and Oudh Government Gazette	26th January, and 2nd and 9th February, 1884.
Bombay Government Gazette	31st January, 1884.
Panjáb Government Gazette	31st January, and 7th and 14th February, 1884.
Fort St. George Gazette	12th February, 1884.
Central Provinces Gazette	26th January, and 2nd and 9th February, 1884.
British Burma Gazette	2nd, 9th and 16th February, 1884.
Assam Gazette	9th, 16th and 23rd February, 1884.

In the Vernaculars.

Province.	*Language.*	*Date.*
North-Western Provinces and Oudh	Urdu ...	2nd, 9th and 16th February, 1884.
Panjáb	Urdu ...	18th and 25th February, and 3rd March, 1884.
Bombay	Maráthí, Guzaráthí, Kanarese	7th February, 1884.
	Sindhí ...	21st February, 1884.

6. We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

S. C. BAYLEY.
C. P. ILBERT.
J. W. QUINTON.
D. G. BARKLEY.

The 9th July, 1884.

D. FITZPATRICK,
the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, AUGUST 2, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Report of the Select Committee on the Bill to amend and provide for the extension of the Northern India Takkáví Act, 1879, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th July, 1884 :—

WE, the undersigned Members of the Select Committee to which the Bill to amend and provide for the extension of the Northern India Takkáví Act, 1879, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

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From Secretary to Government, Bombay, No. 1670, dated 23rd February, 1884, and enclosures [Printed Papers No 6].
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From Officiating Junior Secretary to Government, Panjáb, No. 110, dated 25th March, 1884, and enclosures [Printed Papers No. 10].
From Chief Commissioner, Ajmer-Merwára, No. 281, dated 2nd April, 1884, and enclosures [Printed Papers No. 11].
From Secretary for Birár to Resident, Haidarábád, No. 110G., dated 4th April, 1884, and enclosures [Printed Papers No. 12].
From Officiating Secretary to Chief Commissioner, Assam, No. 443, dated 19th April, 1884 [Printed Paper No. 13].
From Chief Secretary to Government, Madras, No. 1010, dated 24th April, 1884, and enclosure [Printed Papers No. 14].
From Officiating Secretary to Government, Bengal, No. 282T.R., dated 6th May, 1884, and enclosures [Printed Papers No. 15].

2. We have at the instance of the Government of Bombay made the Bill applicable by its own force to that Presidency, and repealed sections 4 and 5 of Act XV of 1880, the similar law at present in force there.

3. We have considered the objections taken by the British Indian Association to sections 5 and 6, but they appear to us to be based on a misapprehension as to the effect of those sections. The Association fear that a landlord's interest may be in some way affected by a sale for arrears of advances due by his tenant, but there is nothing in the Bill to warrant anything of the kind.

Section 6 relates merely to contribution between those taking the loan, and section 5, which provides for the recovery of arrears, does not enact that they shall be recoverable as if they were arrears of land-revenue due in respect of any particular land, but merely as if they were arrears of land-revenue due by the defaulter, and accordingly no charge is created over land even when the loan has been taken by its owner.

4. We have also considered the suggestion of the Government of the Panjáb that the lambardárs of a village should be empowered to engage for a loan on behalf of the whole proprietory body, but we do not think that it would be safe to confer any such power.

As regards the inconvenience which it is suggested may arise "when it might be desirable to make a loan to a village-community as such" from requiring "the signature of each member of the community," we would observe that loans of the description contemplated by the Bill would, as a rule, be made not to village-communities as such but to individuals, and that when, with a view to having better security for the recovery of the money, it is proposed that a large number of persons should join and make themselves jointly and severally responsible for the aggregate of the loans to all, it would be comparatively immaterial whether a few more or a few less so joined.

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S. C. BAYLEY.
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The 9th July, 1884.

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, AUGUST 9, 1884.

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PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Report of the Select Committee on the Bill to amend and provide for the extension of the Northern India Takkáví Act, 1879, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th July, 1884 :—

We, the undersigned Members of the Select Committee to which the Bill to amend and provide for the extension of the Northern India Takkáví Act, 1879, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

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From Chief Commissioner, Ajmer-Merwára, No. 231, dated 2nd April, 1884, and enclosures [Printed Papers No. 11].
From Secretary for Birár to Resident, Haidarábád, No. 1106., dated 4th April, 1884, and enclosures [Printed Papers No. 12].
From Officiating Secretary to Chief Commissioner, Assam, No. 443, dated 19th April, 1884 [Printed Paper No. 13].
From Chief Secretary to Government, Madras, No. 1010, dated 24th April, 1884, and enclosure [Printed Papers No. 14].
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Section 6 relates merely to contribution between those taking the loan, and section 5, which provides for the recovery of arrears, does not enact that they shall be recoverable as if they were arrears of land-revenue due in respect of any particular land, but merely as if they were arrears of land-revenue due by the defaulter, and accordingly no charge is created over land even when the loan has been taken by its owner.

4. We have also considered the suggestion of the Government of the Panjáb that the lambardárs of a village should be empowered to engage for a loan on behalf of the whole proprietary body, but we do not think that it would be safe to confer any such power.

As regards the inconvenience which it is suggested may arise "when it might be desirable to make a loan to a village-community as such" from requiring "the signature of each member of the community," we would observe that loans of the description contemplated by the Bill would, as a rule, be made not to village-communities as such but to individuals, and that when, with a view to having better security for the recovery of the money, it is proposed that a large number of persons should join and make themselves jointly and severally responsible for the aggregate of the loans to all, it would be comparatively immaterial whether a few more or a few less so joined.

We have, however, in order to facilitate the working of section 6, inserted words to make it clear that the signature required by that section may be affixed by an agent duly authorized.

5. The publication ordered by the Council has been made as follows:—

In English.

Gazette.	*Date.*
Gazette of India	19th and 26th January, and 2nd February, 1884.
Calcutta Gazette	23rd and 30th January, and 6th February, 1884.
North-Western Provinces and Oudh Government Gazette	26th January, and 2nd and 9th February, 1884.
Bombay Government Gazette	31st January, 1884.
Panjáb Government Gazette	31st January, and 7th and 14th February, 1884.
Fort St. George Gazette	12th February, 1884.
Central Provinces Gazette	26th January, and 2nd and 9th February, 1884.
British Burma Gazette	2nd, 9th and 16th February, 1884.
Assam Gazette	9th, 16th and 23rd February, 1884.

In the Vernaculars.

Province.	*Language.*	*Date.*
North-Western Provinces and Oudh	Urdu ...	2nd, 9th and 16th February, 1884.
Panjáb	Urdu ...	18th and 25th February, and 3rd March, 1884.
Bombay	Maráthí; Guzaráthí; Kanarese	7th February, 1884.
	Sindhí ...	21st February, 1884.

6. We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

S. C. BAYLEY.
C. P. ILBERT.
J. W. QUINTON.
D. G. BARKLEY.

The 9th July, 1884.

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, AUGUST 23, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 20th August, 1884, and was referred to a Select Committee:—

No. 9 OF 1884.

A Bill to legalize the discharge by the Lieutenant-Governor of the North-Western Provinces of certain functions assigned to the Governor General in Council.

WHEREAS certain functions which are by enactments in force in the North-Western Provinces assigned to the Governor General in Council are in practice discharged by the Lieutenant-Governor of those Provinces, and it is expedient that these functions should continue to be so discharged, and that their discharge in the past should be legalized;

It is hereby enacted as follows:—

Transfer to Lieutenant-Governor of certain functions of Governor General in Council.

The sections of the enactments hereto scheduled which are specified in the third column of the schedule shall have effect, and, so far as may be necessary to validate anything heretofore done under them by the Lieutenant-Governor of the North-Western Provinces, shall be deemed to have had effect, as if the Lieutenant-Governor of the North-Western Provinces were therein referred to instead of the Governor General in Council.

THE SCHEDULE.

(a) Regulations of the Bengal Code.

Number and year.	Subject.	Section.
V of 1799	To limit the interference of the Zilá and City Courts of Díwání Adálat in the execution of wills and administration to the estates of persons dying intestate.	7
II of 1800	For laying open to public use the stone-quarries at Chunar, Gházipur and Mirzapur, in the Province of Benares, subject to a fixed duty.	10 & 14
IX of 1833.	To modify certain portions of Regulation VII of 1832 and Regulation IV of 1828; to provide for the more speedy and satisfactory decision of judicial questions cognizable by officers of Revenue employed in making settlements under the above Regulations; for enforcing the production of the village accounts; for the more extensive employment of native agency in the Revenue Department; and to declare the intent of section 5, Regulation VII of 1822, touching claims to málikána.	16, 17 & 25

(b) Act of the Governor General in Council.

Number and year.	Subject.	Section.
XII of 1856.	To amend the law respecting the employment of amins of the Civil Courts in the Presidency of Fort William.	2

STATEMENT OF OBJECTS AND REASONS.

UNDER certain enactments in force in the North-Western Provinces certain functions are assigned to the Governor General in Council, which in practice are now discharged by the Lieutenant-Governor of those provinces. Thus, by sections 10 and 14 of Bengal Regulation XXXIII of 1800 (*for laying open to public use the stone-quarries at Chunar, Gházipur and Mirzapur, in the Province of Benares, subject to a fixed duty*), the Governor General in Council is empowered to sanction the allowances and establishment of the dároghas of the stone-quarries referred to, to fix the rate of duty payable in respect of stone excavated from those quarries, and to make further rules respecting the quarries. As these quarries have now become Provincial both financially and administratively, they have long been under the control of the Local Government, which has been in the habit of exercising the powers above noticed, though they are by law assigned to the Governor General in Council.

2. As the discharge by the Lieutenant-Governor of the North-Western Provinces of these and similar functions assigned by other enactments to the Governor General in Council, though in accordance with existing administrative arrangements, would seem to be of doubtful legality, the present Bill has been prepared with the object of empowering the Lieutenant-Governor to continue to discharge these functions in the future and legalizing their discharge by him in the past.

C. P. ILBERT.

The 4th August, 1884.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 20th August, 1884, and was referred to a Select Committee :—

No. 10 OF 1884.

A Bill to amend the Transfer of Property Act, 1882.

WHEREAS it is expedient to amend the Transfer of Property Act, 1882; It is hereby enacted as follows :— IV of 1882.

1. For the fifth clause of section 1 of the said Act the following shall be substituted, namely :— Amendment of section 1 of Act IV of 1882.

"And any Local Government may, with the previous sanction of the Governor General in Council, from time to time, by notification in the local official Gazette,—

"(*a*) exempt, either retrospectively or prospectively, any part of the territories administered by such Local Government from all or any of the following provisions, namely :—

"Sections fifty-four, paragraphs two and three, fifty-nine, one-hundred and seven and one hundred and twenty-three; or

"(*b*) direct, either retrospectively or prospectively, that section forty-one shall not apply throughout any part of those territories to any property in which a member of any race, sect, tribe or class specified in the notification is interested."

2. The following clause shall be deemed to have been added to the first section of the said Act from the date on which it came into force, namely :— Addition to same section.

"Notwithstanding anything in the foregoing part of this section, sections fifty-four, paragraphs two and three, fifty-nine, one hundred and seven and one hundred and twenty-three shall not extend or be extended to any district or tract of country excluded from the operation of the Indian Registration Act, 1877, under the power conferred by the first section of that Act or otherwise." III of 1877.

3. To section 4 of the said Act the following shall be added, namely :— Addition to section 4 of same Act.

"And sections fifty-four, paragraphs two and three, fifty-nine, one hundred and seven and one hundred and twenty-three shall be read as supplemental to the Indian Registration Act, 1877." III of 1877.

4. In section 69 of the said Act— Amendment of section 69 of same Act.

(*a*) after the words "is valid in the following cases" the words "and in no others" shall be inserted; and

(*b*) after the words "Hindu, Muhammadan or Buddhist," in both places where they occur, there shall be inserted the words "or a member of any other race, sect, tribe or class from time to time specified by the Local Government, with the previous sanction of the Governor General in Council, in the local official Gazette in this behalf."

STATEMENT OF OBJECTS AND REASONS.

THE last clause of section 1 of the Transfer of Property Act, 1882, provides that any Local Government may, with the previous sanction of the Governor General in Council, exempt, either retrospectively or prospectively, throughout the whole or any part of the territories administered by such Local Government, the members of any race, sect, tribe or class from all or any of the following provisions, namely, sections 41, 54 (paragraphs 2 and 3), 59, 69, 107 and 123.

54. * * Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

59. Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by an instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karáchí and Rangoon, by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

107. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immoveable property may be made either by an instrument or by oral agreement.

123. For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

2. In a letter, dated the 6th September, 1882, the Chief Commissioner of Assam asked for an expression of opinion from the Government of India as to the effect which the exemption under that clause, of "any race, sect, tribe or class" from the provisions of section 54 (paragraphs 2 and 3) and sections 59, 107 and 123, which are set out on the margin, has upon transactions, one of the parties concerned in which is a member of such race, sect, tribe or class, while the other party does not belong to an exempted class.

3. To this reference the Government of India, on the 13th December, 1882, replied that the precise manner in which the exemption would operate under the circumstances described was a matter of some difficulty; and the only satisfactory means by which an intelligible operation might be given to section 1 of the Act seemed to be the amendment of that section so as to make the exemption from sections 54, 59, 107 and 123 local and not personal.

4. The Chief Commissioner, in a letter dated 12th January, 1883, suggested as an alternative, and in his opinion a preferable one, a power to exempt not persons or places but transactions in which one or both of the parties might be members of the race, sect, tribe or class for which the sections in question might be deemed unsuitable.

5. It was thought desirable to obtain the opinions of the other Local Governments on the two alternative proposals thus put forward, and accordingly, on the 7th May, 1883, a circular was issued for this purpose.

6. It will be observed that the question thus raised was confined to the power conferred by section 1 of the Act to exempt from the operation of sections 54, 59, 107 and 123; but, attention having been once drawn to the subject, it was natural that the effect of an exemption from the other two sections of the Act (41 and 69) mentioned in section 1 and set out in the margin should also be considered; and, on looking into the matter, it was found that, while an exemption under either of those sections would give rise to questions very similar to those raised by the Chief Commissioner of Assam in the case of the sections referred to by him, there was this further difficulty in regard to section 69 that the object of allowing any power to exempt from it was not apparent. The circular accordingly asked for the opinions of the Local Governments in regard to these sections also.

41. Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

69. A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property, or any part thereof, without the intervention of the Court, is valid in the following cases (namely)—

(*a*) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindú, Muhammadan or Buddhist;

(*b*) where the mortgagee is the Secretary of State for India in Council;

(*c*) where the mortgaged property or any part thereof is situate within the towns of Calcutta, Madras, Bombay, Karáchí or Rangoon.

But no such power shall be exercised unless and until—

(1) notice in writing requiring payment of the principal money has been served on the mortgagor or one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or

(2) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised, or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances, if any, to which the sale is not made subject, or after payment into court under section fifty-seven of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property or authorized to give receipts for the proceeds of the sale thereof.

Nothing in the former part of this section applies to powers conferred before this Act comes into force.

The powers and provisions contained in sections six to nineteen (both inclusive) of the Trustees and Mortgagees' Powers Act, 1866, shall be deemed to apply to English mortgages, wherever in British India the mortgaged property may be situate, when neither the mortgagor nor the mortgagee is a Hindú, Muhammadan or Buddhist.

7. The replies of the Local Governments have now been received and considered by the Government of India, and the following are the conclusions to which they seem to point.

8. In the first place, as regards the power of exempting from the operation of sections 54, 59, 107 and 123, it seems to the Governor General in Council best to make it simply a power of exempting locally, that is to say, the exemption should be absolute and cover transactions relating to any immoveable property within the specified area, whether both or one or none of the parties may belong to those races or tribes for whose benefit the exemption is intended. To give a personal character to the exemption and restrict it, as some suggest, to transactions within the area, to which either both parties or one of the parties are of particular races, would give rise to uncertainty of title and other difficulties and doubts noticed by Sir C. Turner and others. With a local exemption clause of an absolute character an intending purchaser has to look to nothing but the situation of the property.

9. It is true that there may be advanced people living in exempted localities for whom the sections in question would provide a law more suitable than that which prevails where they do not apply, but it must be remembered that these people always could, and Europeans, it is believed, generally would, follow the practice of having formally executed and registered documents, and this would to a great extent give them the benefits aimed at by the Act; for it must be borne in mind that in the places in question titles would not usually be complicated, and in any case the sections of the Act referred to are not an essential part of the law, but merely an improvement of it, which is not in force as yet in great provinces like Bombay, the Panjáb and British Burma. Again, on the other hand, it is true that there may be members of wild tribes settled in some non-exempted localities, and that they may find it difficult to learn to act up to the law; but, as has been observed by some of the authorities consulted, wild people scattered in this way among a population the great mass of which is civilized soon get into the ways of the people among whom they live.

In either case the objection is one that must apply to most of our enacted laws, and indeed to a good deal of the customary law of the country. We cannot get a law that will suit everybody; we must be content with a reasonably close approximation.

10. The first section of the Bill accordingly amends section 1 of the Act so as to empower a Local Government, with the previous sanction of the Governor General in Council, to exempt any part of the territories under its administration from the operation of any of these sections.

11. Next, as regards the powers to exclude the operation of section 41, the considerations to be borne in mind are fully stated by the Chief Justice of Madras in his opinion.

Sir C. Turner observes that the general rule that no one can confer a higher right in property than he himself possesses in some cases worked obvious hardship; and, as the science of jurisprudence advanced, it was limited by the exception declared in section 41, on the principle that, where one of two innocent persons must suffer from the fraud of a third party, the loss should fall on him who has created or could have prevented the opportunity for the fraud. To races which have not made a substantial progress in civilization, this rule appears to Sir Charles Turner to be unsuited for the following reasons, as stated in his own words:—

"Regarding the question in its sentimental aspect, it is certain that a member of a race unacquainted with the refinements of equity would fail to recognize the justice of a rule which caused him to be deprived of his property by what is *ex hypothesi* a fraud.

"I do not contend that legislation is to be governed by sentimental considerations, but I have heretofore asserted, and still hold, that legislation should only be so far in advance of the general understanding that its justice should be recognized by the more enlightened.

"There is, however, a substantial reason to be deduced from the rule itself, which shows its inapplicability to uncivilized races. The rule affords protection only to a purchaser for consideration who acts in good faith after reasonable inquiry.

"The imposition of these conditions on the purchaser suggests to persons, who have occasion to create an ostensible ownership of their property in others, the prudence of providing certain safeguards. If they are well advised, they are careful to secure evidence of the actual ownership, so that a purchaser, on making due inquiry, must either ascertain the true character of the transaction, or entertain such suspicion of its character that he can no longer assert that he acted in good faith.

"The transactions of uncivilized races in the matter of property are of the simplest character; they are unacquainted with the precautions which technical skill has devised to secure property.

"Again, as society progresses, men are habituated to exercise greater caution in their dealings with their fellows, and have larger opportunities for selecting agents who are reputed either to be worthy of confidence or to be in a position to answer for a breach of confidence. A prudent man selects for an office of trust a person of tried probity and some substance. The uncivilized races have less choice in the selection of agents and less opportunity for forming a judgment of the character and position of their agents."

12. The conclusion to which these remarks seem to point is that the Government should be empowered to direct that section 41 should not apply throughout any particular local

area to any property in which a member of any particular race, sect, tribe or class is interested, and it is on these lines that sub-clause (*b*) of the new fifth clause which the Bill proposes to insert in the first section of the Act has been framed.

13. The discussion regarding section 69 has opened out questions extending beyond the particular difficulty first brought to notice, and it is fortunate that the Government have had in considering them the assistance of Sir C. Turner, who was a member of the Commission by which the Transfer of Property Bill was settled.

The circumstances under which the section was enacted will be found stated in the following extract from his Minute:

"In England, it is usual to confer on a mortgagee, in case of default, a power to sell the mortgaged property without the intervention of a Court of justice; and, where the instrument of mortgage does not confer the power, but does not in express terms negative it, a mortgagee is empowered by statute to sell on the expiry of twelve months after the date of default and of six months from the date on which notice is given of his intention to exercise the power—23 & 24 Vic., c. 145. This statutory provision was, by Act XXVIII of 1866, extended to mortgages in this country to which the English law is applicable.

"On the other hand, the simple mortgage in India did not authorize a sale without the order of a Court, and by Regulation XVII of 1806 in the Bengal Presidency it had been enacted that a mortgage by conditional sale should not become foreclosed without the service of a notice through the District Court, and on the expiry of a year of grace. Inferring the policy of the legislature from this Regulation, the Sadr Díwání Adálat refused to give effect to an express power of sale—S. D. A., 1847-354. In the Bombay Presidency, Mr. Justice Melville expressed a doubt whether a private sale of property in the Mufassal, effected by a mortgagee under a power, would be valid—VIII Bombay H. C., A. C., 143.

"On the other hand, I entertained the opinion, and I believe acted on it before the Transfer of Property Act came into operation, that, in the absence of a prohibition of law, the owner of property was competent to confer on a mortgagee what powers he himself possessed, and that, if a mortgagor having, as owner, authority to sell, created a power of sale in a mortgagee, and the mortgagee duly exercised the power, the Courts were bound to recognize the validity of the sale.

"*In Bhanoomutty Chawdiam* vs. *Premchund Nesgee*, XV B. L. R. 28, property in the Mufassal had been mortgaged by an instrument in the English form containing a power of sale, and subsequently mortgaged to a third party by a conditional sale. The first mortgagee then exercised his power of sale, and subsequently to the sale the second mortgagee took proceedings to foreclose. It was held that the purchaser under the power was entitled to notice of foreclosure, and impliedly that a sale under a power might be valid."

"In this state of the authorities," Sir Charles Turner continues, "it fell to the Law Commission to offer for the acceptance of the legislature a proposal to settle the law. It was felt that, in accordance with the principles of freedom of contract, an owner of property should be at liberty to confer on a mortgagee any of the powers which he could himself exercise, and that a borrower might more readily obtain accommodation, or obtain it on easier terms, if he could offer a security which would be speedily converted by the tender without the delay and the cost of an application to a Court of justice. On the other hand, it was recognized that in this country the large majority of mortgage-securities are created by persons who are poor and illiterate in favour of more sharpwitted creditors, and that, in an agricultural country, landed securities are subject to sudden and excessive variations in value, which are rarely foreseen by borrowers. The Commission came to the conclusion that, while more wealthy borrowers in the country and all borrowers in the presidency-towns might be left to deal with their property as they pleased, it was necessary in the present state of British India to create a legislative safeguard for the poorer classes in the country. They, therefore, proposed that the creation of a power of sale should be declared invalid except in mortgages where the principal money secured exceeded Rs. 500, or in mortgages to the Secretary of State or in mortgages of property in the presidency-towns. In Committee, the section was recast. Instead of declaring that a power of sale conferred by the instrument of mortgage is invalid except in the cases specified, the section, as it now stands, declares that in certain cases it is valid."

Sir Charles Turner adds—

"Unless it be held that the express declaration of the validity of such a power in certain cases is tantamount to a declaration of its invalidity in other cases, which I incline to doubt, the object sought by the Law Commission has not been attained, and the validity of the power in cases other than those specified is still left an open question.

"It may have been desirable that the protection the Law Commission intended to confer in the case of mortgages for small amounts should have been extended to mortgages for somewhat larger sums, but I think it is to be regretted that the amendment should have been effected in such terms as to leave the question doubtful whether any protection is given to mortgages of any class or amount, and I trust advantage may be taken of the opportunity to

re-consider the provisions of the section. It will be seen that the section, as it now stands, affects only—

"(1) parties to an English mortgage, *i.e.*, a mortgage in the English form, who are not Hindús, Muhammadans or Buddhists (an inexact enumeration of the creeds held by natives of India);

"(2) parties to a mortgage to the Secretary of State;

"(3) parties to mortgages of property in the presidency-towns.

"As the section now stands, I do not see any reason for including it in the class of sections for which certain races may be exempted; I apprehend it was included before it was recast."

14. Section 4 of the Bill accordingly amends section 69 of the Act so as to express clearly what was actually intended, and no power to exempt from the main provisions of the section has been retained; but, as Mr Justice Muthuswami Aiyar has pointed out that there are other classes whom it is even more necessary to exclude from the operation of the exceptional provision in clause (*a*) than Hindús, Muhammadans and Buddhists, words have been added to that clause to provide a power of excluding them.

15. Section 2 of the Bill is intended merely to remove a formal defect in the Act which has been brought to notice in the course of the recent discussions. It was of course never intended that the provisions of the Act which assume the existence of a registration system should take effect in those tracts which are excluded from the operation of the Registration Act; but the Act omitted to make any express provision to that effect, and that omission is now supplied.

16. The addition which it is proposed to make to section 4 of the Act by section 3 of the Bill has for its object merely to remove a difficulty which has been felt in some quarters as to the bearing which the provisions of the Act relating to registration and the Registration Act have on one another.

The 9th August, 1884.

C. P. ILBERT.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 20th August, 1884, and was referred to a Select Committee :—.

No. 11 OF 1884.

A Bill to facilitate the construction of Telegraphs, and to amend the Indian Telegraph Act, 1876.

WHEREAS it is expedient to give power to place and maintain telegraph lines and posts under, over, along, across, in or upon immoveable property;

And whereas it is also expedient to amend the Indian Telegraph Act, 1876; I of 1876.

It is hereby enacted as follows:—

Preliminary.

1. *(1)* This Act may be called the Indian Telegraph Act, 1884.

Short title, local extent and commencement.

(2) It extends to the whole of British India; and

(3) It shall come into force at once:

Provided that nothing in this Act shall affect any right acquired by the Government or a licensee under section 4 of the Indian Telegraph Act, 1876, or any contract entered into before the passing of this Act. I of 1876.

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

Definitions.

[cf. 26 & 27 Vic., c. 112, s. 3.] I of 1876. *(1)* "Telegraph line" means a wire or wires used for the purpose of a telegraph as defined in the Indian Telegraph Act, 1876, with any casing, coating, tube or pipe enclosing the same, and any apparatus connected therewith for that purpose.

[cf. 26 & 27 Vic., c. 112, s. 3.] *(2)* "Post" means a post, pole, standard, stay, strut or other above-ground contrivance for carrying, suspending or supporting a telegraph line.

[cf. 26 & 27 Vic., c. 112, s. 3.] *(3)* "Telegraph authority" means—

(a) the Director General of Telegraphs or any officer appointed by him in this behalf; and

(b) in respect of any particular matter, any person holding a license from the Governor General in Council under section 4 of the Indian Telegraph Act, 1876, and empowered, by such authority as the Governor General in Council may, from time to time, appoint in this behalf, to discharge the functions of a telegraph authority in respect of that matter. I of 1876.

(4) "Local authority" means any municipal committee, local board, body of port commissioners or other body created for the public benefit and legally entitled to any immoveable property or the control thereof.

Power to place Telegraph Lines and Posts.

3. A telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immoveable property, and repair, alter or remove the same:

Power for telegraph authority to place and maintain, alter and remove a telegraph line and post.

Provided that—

(a) a telegraph authority shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which it places any telegraph line or post; [cf. 26 & 27 Vic., c. 112, s. 6.]

(b) in the exercise of the powers conferred by this section, a telegraph authority shall do as little damage as possible; [cf. 26 & 27 Vic., c. 112, s. 7].

(c) a telegraph authority shall not exercise those powers in respect of any property vested in or under the control of any local authority except with the consent of the local authority;

(d) a telegraph authority shall not exercise those powers in respect of any other property unless it has paid or tendered full compensation to all persons interested for all damage which will be sustained by them by reason or in consequence of the exercise of those powers.

Provisions applicable to Property of Local Authorities.

4. Any consent given by a local authority under section 3 may be given subject to such reasonable conditions as to the payment of any expenses to which it is estimated the local authority will be put in consequence of the exercise of the powers, or as to the time or mode of execution of any work, or as to any other thing [cf. 26 & 27 Vic., c. 112, s. 5 (3).]

Power to local authority to consent under section 3 subject to condition.

connected with or relative to any work, as the local authority giving consent thinks fit to prescribe.

Removal or alteration of telegraph line or post on property of local authority.

5. *(1)* When, under the foregoing provisions of this Act, a telegraph line or post has been placed by a telegraph authority under, over, along, across, in, or upon any property vested in or under the control of a local authority, and the local authority, having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed or altered, the local authority may call upon the telegraph authority to remove or alter it, and, if the telegraph authority refuses or omits to do so, may apply to the Local Government to order its removal or alteration.

(2) A Local Government receiving an application under this section may in its discretion reject the same, or make an order for the removal or alteration of the telegraph line or post, absolutely or subject to such conditions as it thinks fit; and the decision of the Local Government shall be final and conclusive.

Power to alter position of gas or water pipes.

6. A telegraph authority may, for the purpose of exercising the powers conferred upon it by this Act in respect of any property vested in or under the control of a local authority, alter the position thereunder of any pipe (not being a main) for the supply of gas or water:

Provided that—

(*a*) when a telegraph authority desires to alter the position of any such pipe, it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local authority, and, when the pipe is not under the control of the local authority, to the person under whose control the pipe is;

(*b*) a local authority or person receiving notice under clause (*a*) may send a person to superintend the work, and the telegraph authority shall execute the work to the reasonable satisfaction of the person so sent.

Disputes between telegraph authorities and local authorities.

7. If any dispute arises between a telegraph authority and a local authority in consequence of the local authority refusing its consent under section 3 or prescribing any condition under section 4, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by the Local Government, and the decision of the Local Government thereon shall be final and conclusive.

Telegraph line and posts placed before the passing of this Act.

8. A telegraph line or post placed by a telegraph authority before the passing of this Act under, over, along, across, in or upon any property vested in or under the control of a local authority shall be deemed to have been placed in exercise of the powers conferred by this Act.

Provisions applicable to other Property.

Disputes as to compensation under section 3.

9. If any dispute arises concerning the sufficiency of the amount of the compensation paid or tendered under section 3, clause (*d*), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him, and his determination thereof shall be final and conclusive.

Removal or alteration of telegraph line or post on property not belonging to a local authority.

10. *(1)* When, under the foregoing provisions of this Act, a telegraph line or post has been placed by a telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration and call upon the telegraph authority to remove or alter the line or post accordingly, and, if the telegraph authority refuses or omits to do so, may apply to the District Judge within whose jurisdiction the property is situate to order the removal or alteration.

(2) A District Judge receiving an application under this section may, in his discretion, reject the same or make an order absolutely or subject to conditions for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form, and the order so made shall be final and conclusive.

Amendments of the Indian Telegraph Act, 1876.

Amendment of the definition of "telegraph" in Act I of 1876.

11. To the definition of "telegraph" in section 3 of the Indian Telegraph Act, 1876, the following shall be added, namely:— I of 1876.

"and includes any apparatus for transmitting or making telegraphic, telephonic or other communications by means of electricity."

Amendment of section 8, clause (*a*), of same Act.

12. To clause *(a)* of section 8 of the same Act the following shall be added, namely:—

"or of any telegraph established by Government and leased to any person."

Addition to section 8 of same Act.

13. To the same section the following words shall be added, namely:—

"When prescribing rules under clause (*a*) of this section, the Governor General in Council may by the rules impose fines for any breach of the same:

"Provided that the fines so imposed shall not exceed the following limits, namely:—

"*(1)* when the licensee or lessee is punishable for the breach, one thousand rupees, and in the case of a continuing breach a further fine of two hundred rupees for every day after the first during the whole or any part of which the breach continues;

"*(2)* when a servant of the licensee or lessee or any other person is punishable for the breach, one-fourth of those amounts."

STATEMENT OF OBJECTS AND REASONS.

THE main object of this Bill is to give power to the Government, and to any company or person licensed under section 4 of the Indian Telegraph Act, 1876, and specially empowered in this behalf, to place telegraph lines under or over property belonging whether to private persons or to public bodies.

2. The attention of the Government has recently been directed to the fact that, as the law now stands, the Governor General in Council and his licensees have no power to place telegraph lines upon the land of municipal or other similar bodies or of private persons. In England the requisite powers are conferred on the Postmaster General, who works and maintains the telegraphs in that country, by 26 & 27 Vic., cap. 112, as amended by 41 & 42 Vic., cap. 76; and as it seems desirable that the Government in which the exclusive privilege of establishing telegraphs in this country is vested should possess somewhat similar powers, the present Bill has been prepared.

3. Section 3 empowers the Government or any company or person licensed under section 4 of the Indian Telegraph Act, 1876, and specially authorized by a Government officer to place and maintain telegraph lines and posts under, over, along, across, in or upon the property of any "person", which term includes a body corporate. It is considered that licensees should have these powers, because the licenses granted always strictly limit the area of the operations of the licensees, and it would be somewhat anomalous for local bodies and private persons to have the power to neutralize the licenses granted by the Governor General in Council by objecting to the licensees' operations, or by hampering them by the exaction of fees for permission to work under their licenses. The powers thus given are, however, to be exercised so as to do as little damage as possible, and their exercise is moreover made subject to important restrictions and conditions.

4. When the property belongs to a municipal board or other local authority, the powers conferred by the Act cannot be exercised over it without the consent of that authority; and that consent may be given subject to conditions. Among other conditions which can be imposed is one requiring that any expenses to which the local authority may be put by the exercise of the power shall be made good; but it will be observed that no provision is made for the payment of compensation on any other account to a local authority whose property is made use of for this purpose, it being considered that, as the construction of telegraphs is a matter in which the public are interested, no charge should be made for accommodation of this sort when it can be granted without inconvenience to the public or expense to the local authority concerned.

5. It may sometimes happen that, though at the time when a telegraph authority desires to exercise its powers over some property of a local authority there may be no reasonable ground for objecting, and the local authority may thus find itself compelled to consent, a state of things may subsequently arise under which the continued exercise of the powers would be felt as a grave public inconvenience or a cause of serious loss. Land, *e.g.*, which was waste at the time the telegraph line was constructed over it might afterwards be required for some important public object or might acquire great value for building purposes, and, as no compensation (except for actual expenses out of pocket) would have been paid to the local authority at the time the line was constructed, it is but just that provision should be made for the removal or alteration of the line in such an event. This accordingly is done by section 5 of the Bill, which empowers the local authority to call upon the telegraph authority to remove or alter its telegraph or post, and, in the event of the telegraph authority refusing or neglecting to do so, gives an appeal to the Local Government.

6. In the event, which it is believed will be rare, of a local authority arbitrarily refusing its consent to the exercise by a telegraph authority of the powers conferred by the Bill or clogging its consent with unreasonable conditions, it will (section 7) be open to the telegraph authority to appeal to the Local Government, whose decision will be final.

7. Turning now to the case in which it may be desired to exercise the powers given by the Bill over the property of private persons, it will be seen that here provision is made for the payment of full compensation, the amount of which in the event of dispute will (section 9) be determined by the Civil Court, and that, in the event of a person upon whose property a telegraph line or post has been placed desiring subsequently to deal with the property in such a way as would make it necessary or convenient that the line or post should be removed to another part of it or to a higher or lower level or altered in form, he can (section 10) tender the cost of the work and call upon the telegraph authority to remove or alter the line or post, and, if that authority refuses to do so, can appeal to the Civil Court.

8. It may be observed, however, that in practice in this country the power of taking telegraph lines through private property is not likely to be exercised either by the Government or by its licensees except on rare occasions, and then as a rule only to the extent of crossing with the wire, a post being scarcely ever erected on private land. Private property has hitherto been always avoided as much as possible, and it is likely to be still more carefully avoided in future if it is made clear, as it is proposed to do by this Bill, that full compensation will have to be paid for exercising the power over private and not for exercising it over public property.

9. The present opportunity has been taken to make three amendments of the Indian Telegraph Act, 1876, which experience has shown to be desirable. The first has for its object the emendation of the definition of "telegraph" so as to bring it into more exact conformity with the construction put upon the definitions in the English Acts by a recent decision of the High Court of Justice in England.

10. The second is intended to provide for the regulation of telegraph lines constructed by the Government but leased to companies or individuals by whom they are worked. The position of such lines under the Act as it at present stands is far from clear, and the object of the amendment proposed in section 12 of the Bill is to put them on much the same footing as licensed lines.

11. The object of the third amendment, which is made by section 13 of the Bill, is to prescribe penalties for the breach of the rules made under section 8 of the Act for the conduct of telegraphs worked under license or lease. In such cases, as the Act now stands, the only remedy is to revoke the license or lease, but this course would in most cases cause such great public inconvenience that it is impracticable. The result is that at present there is virtually no penalty for the infringement of the rules made under section 8 of the Act. To remedy this state of things, the Bill adds a clause to that section empowering the Governor General in Council to prescribe by the rules moderate fines for the breach of them.

The 12th August, 1884.

T. C. HOPE.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Report of the Select Committee on the Bill to make better provision for the organization and administration of Municipalities in the Panjáb was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 6th August, 1884 :—

WE, the undersigned Members of the Select Committee to which the Bill to make better provision for the organization and administration of Municipalities in the Panjáb was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

From Officiating Secretary to Government, Panjáb, No. 211, dated 10th April, 1884, and enclosures [Papers No. 1].
From E. vs. Cullin, Esq., dated 27th April, 1884, and enclosure [Papers No. 2].
From Officiating Secretary to Government, Panjáb, No. 68S., dated 16th May, 1884, and enclosures [Papers No. 3].
From Officiating Secretary to Government, Panjáb, No. 74S., dated 16th May, 1884, and enclosure [Papers No. 4].
From Officiating Secretary to Government, Panjáb, No. 79S., dated 21st May, 1884, and enclosure [Papers No. 5].
From Officiating Secretary to Government, Panjáb, No. 88S., dated 27th May, 1884, and enclosures [Papers No. 6].
From Officiating Secretary to Government, Panjáb, No. 94S., dated 29th May, 1884, and enclosures [Papers No. 7].
From Officiating Secretary to Government, Panjáb, No. 121S., dated 9th June, 1884, and enclosures [Papers No. 8].
Extract from the *Tribune* of 14th June, 1884 [Papers No. 9].

2. Instead of repealing the Panjáb Municipal Act, 1873, and bringing the new law into force at once, as was proposed in the Bill as introduced, we have thought it better (section 4 of the amended Bill) to require the Local Government to apply the new law to any place to which that Act had been extended, unless the Local Government comes to the conclusion, and declares by notification in the official Gazette, that the provisions of the Act are not suited to any such place. The Local Government is at the same time empowered to continue in office the members of the present committees as if they had been elected or appointed under the new law for any term not exceeding three years which it may fix. When the new law is thus made applicable to any place to which the Act of 1873 had been extended, that Act will cease to apply; and other consequences will follow, which are set forth in section 12. In the Supplemental chapter, the Local Government is further empowered to withdraw the area of any municipality from the operation either of Act IV of 1873 or of the new law, if the latter has been made applicable. The Local Government will thus be enabled to abolish any municipality constituted under Act IV of 1873, if it appears undesirable to continue municipal institutions in the area under its control.

3. The provisions as to the term of office of members, the removal of members and the filling up of casual vacancies in the committee have been assimilated, as nearly as possible, to the corresponding provisions in the District Boards Act.

4. On the recommendation of the Local Government, we have by section 14 empowered the Commissioner of a division to approve of the election of a president by a second class committee, and to appoint the president of a committee of this class where the committee is not empowered to elect, or fails or does not desire to exercise the power.

5. The provision in section 25 enabling the president or, in his absence, a vice-president to exercise the powers of the committee in cases of emergency has been limited to the power, at the cost of the municipality, to direct the execution of any work or the doing of any act which he considers necessary for the service or safety of the public; and, when he exercises this power, he is required to report his proceedings to the next following meeting of the committee. Where the case is sufficiently provided for by the rules of business under section 24, as to the exercise of the executive authority of the committee, the extraordinary powers given by section 25 of course will not arise, as there would not then be a case of emergency.

6. In section 27 we have provided that nothing done under the Act should be questioned on account of the existence of a vacancy in a committee or joint committee or of any merely formal defect.

7. We have not retained the provision of the Bill as introduced requiring the sanction of the Commissioner of the division to the removal of a paid secretary, and his sanction to the appointment is confined (section 28) to the appointment of a paid secretary and to

the rate of pay to be allowed, and does not extend to approval of the person selected. The responsibility for appointing a proper person will thus rest exclusively with the committee. In cases, however, in which Government officers were employed in the service of a municipality before the passing of this Bill into law, section 12 provides for their remaining in the service of the new committee, and prohibits their dismissal unless under the sanction of the Local Government.

8. The employment of other officers and servants (when there is available budget provision) is made subject only (section 29) to what is necessary and proper for the efficient execution of the duties of the committee, and to any rules which the Local Government may make as to the employment of persons appointed to offices requiring professional skill; but power is given to the Commissioner of the division, subject to an appeal by the committee to the Local Government (section 30), to require the reduction of excessively large or expensive establishments or of unduly high rates of pay.

9. We have raised the limit of the power of first class committees (section 33) to delegate the authority to enter into contracts on their behalf to 500 rupees, and have required all contracts for larger amounts on behalf of any committee to be sanctioned at a meeting of the committee before they can be entered into. It has been suggested that separate provision is required for contracts which do not fix the quantity of work to be done, but only the rate to be paid per unit of work; but we are of opinion that these contracts can be brought within this section by fixing a maximum limit, not exceeding five hundred rupees, on the sum which may become payable under them.

10. In section 34 the limit of value above which contracts are required to be in writing has been increased from Rs. 20 to Rs. 100 in the case of first class committees, and Rs. 50 in the case of second class committees.

11. The prohibition in section 35 of members, officers or servants of the committee being interested in contracts with the committee, unless with the Commissioner's permission, has been assimilated to section 62 of the District Boards Act.

12. Section 36, which takes the place of section 99 of the Bill as introduced, has been modified so as to require notice to be given of all suits against committees, or against their officers for their official acts; the sub-sections as to limitation and as to tender of amends being omitted as unnecessary. The protection thus given corresponds with that given to Government and to public officers by section 424 of the Civil Procedure Code, except that the notice required is shorter.

13. In the Taxation chapter the taxes which committees are empowered to propose for the general purposes of the Act are brought together in section 39, a higher rate of tax on buildings and lands being allowed in certain scheduled municipalities, all of which are hill-stations, than that which is fixed as the maximum elsewhere.

14. In the second sub-section of section 39 we have defined the expression "annual value" as meaning the gross annual rent for which buildings or lands might reasonably be expected to let, and we have omitted the first proviso, as, though it has been the practice in hill-stations to let houses furnished, the furniture supplied is ordinarily of small value; and as most of us are of opinion that the rent to be considered in estimating the annual value is the sum for which they would let if unfurnished, we have added words making this clear.

15. Special powers are also given to impose a scavenging-tax and a water-tax as payment for services rendered to the occupiers of any buildings or land or for the construction and maintenance of works for the supply of water from which such occupiers may benefit. No special power has been thought necessary to enable committees to charge fees for the use of schools or other public institutions maintained by them, as they may impose any conditions they may think proper upon persons who wish to avail themselves of the benefit of such institutions.

16. We have modified the procedure for imposing and assessing taxes (section 42) by providing that new taxes leviable by the year should not come into force except at the commencement of the year, and other new taxes until at least six months have elapsed from the date of the meeting at which, after the requisite sanction has been obtained, their imposition is directed.

17. We have enabled the Local Government (section 45), where any tax appears unfair in its incidence or injurious to the interests of the public, to require the committee to take the necessary measures to remove the objection and, if it fails to comply with the requisition, to suspend the levy of the tax.

18. We have (section 49) given an appeal against assessments, on account of octroi, as in the case of other taxes, and we have also enabled officers hearing appeals against assessments, if they entertain reasonable doubt on any question as to the liability to, or principle of, the assessment, to state a case for the decision of the Chief Court.

19. We have (section 52) saved taxes leviable under the Municipal Act now in force so far as they are consistent with, and within the powers conferred by, the new law.

20. We have in section 59 conferred upon the committee a power to remit a tax on buildings on certain equitable grounds.

21. We have made taxes on buildings and lands, other than the scavenging-tax and the water-tax, payable by the owner and also a charge upon the property, and have therefore found it unnecessary to make them recoverable from the occupier if not paid by the owner after notice.

22. We have added a section (62) giving power to inspect the contents of a conveyance or package to ascertain whether octroi is payable by having it brought before a Magistrate for the purpose, if the person bringing or receiving it within the municipality refuses to allow the necessary inspection, and have in other respects amended the provisions of the Bill as introduced on the subject of the recovery of octroi.

23. The provisions of the Bill on the subject of the municipal fund and of municipal property have been brought together in a new chapter (Chapter IV). In this chapter we have provided (section 68) for prior charges on the municipal fund for loans, establishment-charges and payments for maintenance of pauper-lunatics, audit of accounts, and services rendered to the committee by Provincial Departments of Government, and have empowered the Local Government to make rules with respect to the relative priority to be given to the other duties of the committee. We have also (section 71) declared certain descriptions of property held for municipal purposes to vest in the committee, and have (section 72) introduced a clause, based on a somewhat similar provision of the Bombay Municipal Act, providing that the administration of every public institution maintained out of municipal funds shall vest in the committee, but that the extent of the independent authority of the committee may be prescribed by the Local Government.

24. The sections relating to municipal police have also been collected in a separate chapter (Chapter V). We have added a section (78) defining the powers and duties of the police in respect of offences against the Act or rules made thereunder. By this section they are empowered to arrest persons committing such offences when necessary, and are required to give immediate information of the commission of such offences to the committee, and to assist members or officers of the committee in the exercise of their lawful authority.

25. Another new chapter (Chapter VI) sets forth the powers of the committee to do, or to require others to do, or to abstain from doing, particular acts. This and the following chapter, which deals with offences affecting the public health, safety or convenience, take the place of the powers to make rules for the prevention of nuisances, and for entry on private property for the detection and abatement of nuisances, given by section 67 of the Bill as introduced, and of the powers to issue injunctions and make conditional orders as to nuisances given by sections 68 to 70, and this chapter also embodies the additional powers to make rules and other powers expressly given by the Bill as introduced.

26. In framing these sections, the existing bye-laws of the principal municipalities, and the detailed Municipal Acts in force in other provinces of British India, have been referred to, and we have endeavoured to give all the powers not elsewhere given in the Bill which it appears to be necessary or proper that Panjáb municipalities should possess. While there may be municipalities in which some of these powers are not required, these municipalities can be excepted by the Local Government under one of the provisions contained in the Supplemental chapter from the sections giving the powers which the circumstances of the municipality render unnecessary.

27. Instead of enabling committees to make rules regulating for sanitary reasons the crops which may be grown within municipal limits, we have, by section 116, empowered the Local Government to prohibit by notification the cultivation of any crop, the use of any manure or the irrigation of land in any manner, which is reported by the Sanitary Commissioner to be injurious to health, or to impose such conditions thereupon as may remove the risk of injury, and have provided for compensation where the practice prohibited was of long standing.

28. In section 117, which relates to the regulation of offensive or dangerous trades, and corresponds with section 74 of the Bill as introduced, we have omitted manufactories of gunpowder or fireworks, which can now be regulated by rules made by the Local Government under the Explosives Act, IV of 1884, and shops for smoking opium, as these must be licensed under the Opium Act, and the Local Government may, if it thinks proper, instruct Deputy Commissioners to consult municipalities before granting a license under that Act.

29. In section 119 we have extended the power given by the Bill as introduced to make rules for the inspection and proper regulation of lodging-houses to houses occupied by members of more than one family, and have stated in greater detail the subjects with which such rules may deal. This power, with that given in section 115, to prohibit the use for human habitation of houses unfit to be so used, will enable committees to exercise more effective control than hitherto over the arrangements for the accommodation of human beings where this appears necessary for the preservation of the public health, and will, it is believed, be of special importance, not only in hill-stations, but in places the population of which is liable to be largely increased at particular seasons by the resort of pilgrims or the holding of large fairs.

30. Chapter VII provides for the punishment of certain offences affecting the public health, safety and convenience and of disobedience to orders given by the committee under the powers conferred by the preceding chapter.

31. In Chapter VIII, which deals with control, the changes made have been in the direction of assimilation with the provisions of the Panjáb District Boards Act. We have also revised the list of subjects on which the Local Government is empowered to make rules.

32. In the Supplemental chapter (Chapter IX) we have added provisions that copies of rules should be kept by committees available for inspection and for sale to the public (section 160); that rules or bye-laws made under the Panjáb Municipal Act, 1873, should, so far as consistent with, and within the powers conferred by, this Bill, continue in force until repealed by new rules, which the proper authority is required to make and take the necessary steps for bringing into force so soon as may be (section 161); and we have included provisions for altering the boundaries of municipalities or the class to which they belong (sections 165 to 169), for excepting them from the operation of such parts of the Bill as are not suited to their circumstances (section 170), and for withdrawing them from the operation of the law relating to municipalities (section 171).

33. A special section applicable only to Simla (section 177) has also been added to save the land-tax which has been substituted for the ground-rent formerly charged by Government, and which is levied concurrently with a tax on the annual value of property.

34. The publication ordered by the Council has been made as follows:—

In English.

Gazette.			*Date.*
Gazette of India	...	...	2nd, 9th and 16th June, 1883.
Panjáb Government Gazette	...	...	7th, 14th and 21st June, 1883.

In the Vernaculars.

Province.	*Language.*	*Date.*
Panjáb	... Urdu	... 2nd, 9th and 16th July, 1883.

35. We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

D. G. BARKLEY.
J. GIBBS.
C. P. ILBERT.
T. C. HOPE.

I HAVE not signed this Report, as, though originally appointed a Member of the Select Committee, I was unable to be present at any of the meetings.

J. W. QUINTON.

The 5th August, 1884.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, AUGUST 30, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 20th August, 1884, and was referred to a Select Committee:—

No. 9 OF 1884.

A Bill to legalize the discharge by the Lieutenant-Governor of the North-Western Provinces of certain functions assigned to the Governor General in Council.

WHEREAS certain functions which are by enactments in force in the North-Western Provinces assigned to the Governor General in Council are in practice discharged by the Lieutenant-Governor of those Provinces, and it is expedient that these functions should continue to be so discharged, and that their discharge in the past should be legalized;

It is hereby enacted as follows:—

Transfer to Lieutenant-Governor of certain functions of Governor General in Council.

The sections of the enactments hereto scheduled which are specified in the third column of the schedule shall have effect, and, so far as may be necessary to validate anything heretofore done under them by the Lieutenant-Governor of the North-Western Provinces, shall be deemed to have had effect, as if the Lieutenant-Governor of the North-Western Provinces were therein referred to instead of the Governor General in Council.

THE SCHEDULE.

(a) Regulations of the Bengal Code.

Number and year.	Subject.	Section.
V of 1799	To limit the interference of the Zilá and City Courts of Díwání Adálat in the execution of wills and administration to the estates of persons dying intestate.	7
II of 1800	For laying open to public use the stone-quarries at Chunar, Gházipur and Mirzapur, in the Province of Benares, subject to a fixed duty.	10 & 14
IX of 1833.	To modify certain portions of Regulation VII of 1832 and Regulation IV of 1828; to provide for the more speedy and satisfactory decision of judicial questions cognizable by officers of Revenue employed in making settlements under the above Regulations; for enforcing the production of the village accounts; for the more extensive employment of native agency in the Revenue Department; and to declare the intent of section 5, Regulation VII of 1822, touching claims to málikána.	16, 17 & 25

(b) Act of the Governor General in Council.

Number and year.	Subject.	Section.
XII of 1856.	To amend the law respecting the employment of amíns of the Civil Courts in the Presidency of Fort William.	2

STATEMENT OF OBJECTS AND REASONS.

UNDER certain enactments in force in the North-Western Provinces certain functions are assigned to the Governor General in Council, which in practice are now discharged by the Lieutenant-Governor of those provinces. Thus, by sections 10 and 14 of Bengal Regulation XXXIII of 1800 (*for laying open to public use the stone-quarries at Chunar, Gházipur and Mirzapur, in the Province of Benares, subject to a fixed duty*), the Governor General in Council is empowered to sanction the allowances and establishment of the dároghas of the stone-quarries referred to, to fix the rate of duty payable in respect of stone excavated from those quarries, and to make further rules respecting the quarries. As these quarries have now become Provincial both financially and administratively, they have long been under the control of the Local Government, which has been in the habit of exercising the powers above noticed, though they are by law assigned to the Governor General in Council.

2. As the discharge by the Lieutenant-Governor of the North-Western Provinces of these and similar functions assigned by other enactments to the Governor General in Council, though in accordance with existing administrative arrangements, would seem to be of doubtful legality, the present Bill has been prepared with the object of empowering the Lieutenant-Governor to continue to discharge these functions in the future and legalizing their discharge by him in the past.

C. P. ILBERT.

The 4th August, 1884.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 20th August, 1884, and was referred to a Select Committee :—

No. 10 OF 1884.

A Bill to amend the Transfer of Property Act, 1882.

WHEREAS it is expedient to amend the Transfer IV of 1882. of Property Act, 1882; It is hereby enacted as follows :—

1. For the fifth clause of section 1 of the said Act the following shall be substituted, namely :— Amendment of section 1 of Act IV of 1882.

"And any Local Government may, with the previous sanction of the Governor General in Council, from time to time, by notification in the local official Gazette,—

"(*a*) exempt, either retrospectively or prospectively, any part of the territories administered by such Local Government from all or any of the following provisions, namely :—

"Sections fifty-four, paragraphs two and three, fifty-nine, one-hundred and seven and one hundred and twenty-three; or

"(*b*) direct, either retrospectively or prospectively, that section forty-one shall not apply throughout any part of those territories to any property in which a member of any race, sect, tribe or class specified in the notification is interested."

2. The following clause shall be deemed to have been added to the first section of the said Act from the date on which it came into force, namely :— Addition to same section.

"Notwithstanding anything in the foregoing part of this section, sections fifty-four, paragraphs two and three, fifty-nine, one hundred and seven and one hundred and twenty-three shall not extend or be extended to any district or tract of country excluded from the operation of the Indian Registration Act, 1877, under the power conferred by the first section of that Act or otherwise." III of 1877.

3. To section 4 of the said Act the following shall be added, namely :— Addition to section 4 of same Act.

"And sections fifty-four, paragraphs two and three, fifty-nine, one hundred and seven and one hundred and twenty-three shall be read as supplemental to the Indian Registration Act, 1877." III of 1877.

4. In section 69 of the said Act— Amendment of section 69 of same Act.

(*a*) after the words "is valid in the following cases" the words "and in no others" shall be inserted; and

(*b*) after the words "Hindu, Muhammadan or Buddhist," in both places where they occur, there shall be inserted the words "or a member of any other race, sect, tribe or class from time to time specified by the Local Government, with the previous sanction of the Governor General in Council, in the local official Gazette in this behalf."

STATEMENT OF OBJECTS AND REASONS.

THE last clause of section 1 of the Transfer of Property Act, 1882, provides that any Local Government may, with the previous sanction of the Governor General in Council, exempt, either retrospectively or prospectively, throughout the whole or any part of the territories administered by such Local Government, the members of any race, sect, tribe or class from all or any of the following provisions, namely, sections 41, 54 (paragraphs 2 and 3), 59, 69, 107 and 123.

54. * * Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

59. Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by an instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karáchí and Rangoon, by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

107. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immoveable property may be made either by an instrument or by oral agreement.

123. For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

2. In a letter, dated the 6th September, 1882, the Chief Commissioner of Assam asked for an expression of opinion from the Government of India as to the effect which the exemption under that clause, of "any race, sect, tribe or class" from the provisions of section 54 (paragraphs 2 and 3) and sections 59, 107 and 123, which are set out on the margin, has upon transactions, one of the parties concerned in which is a member of such race, sect, tribe or class, while the other party does not belong to an exempted class.

3. To this reference the Government of India, on the 13th December, 1882, replied that the precise manner in which the exemption would operate under the circumstances described was a matter of some difficulty; and the only satisfactory means by which an intelligible operation might be given to section 1 of the Act seemed to be the amendment of that section so as to make the exemption from sections 54, 59, 107 and 123 local and not personal.

4. The Chief Commissioner, in a letter dated 12th January, 1883, suggested as an alternative, and in his opinion a preferable one, a power to exempt not persons or places but transactions in which one or both of the parties might be members of the race, sect, tribe or class for which the sections in question might be deemed unsuitable.

5. It was thought desirable to obtain the opinions of the other Local Governments on the two alternative proposals thus put forward, and accordingly, on the 7th May, 1883, a circular was issued for this purpose.

6. It will be observed that the question thus raised was confined to the power conferred by section 1 of the Act to exempt from the operation of sections 54, 59, 107 and 123; but, attention having been once drawn to the subject, it was natural that the effect of an exemption from the other two sections of the Act (41 and 69) mentioned in section 1 and set out in the margin should also be considered; and, on looking into the matter, it was found that, while an exemption under either of those sections would give rise to questions very similar to those raised by the Chief Commissioner of Assam in the case of the sections referred to by him, there was this further difficulty in regard to section 69 that the object of allowing any power to exempt from it was not apparent. The circular accordingly asked for the opinions of the Local Governments in regard to these sections also.

41. Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

69. A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property, or any part thereof, without the intervention of the Court, is valid in the following cases (namely)—

(*a*) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindú, Muhammadan or Buddhist;

(*b*) where the mortgagee is the Secretary of State for India in Council;

(*c*) where the mortgaged property or any part thereof is situate within the towns of Calcutta, Madras, Bombay, Karáchí or Rangoon.

But no such power shall be exercised unless and until—

(1) notice in writing requiring payment of the principal money has been served on the mortgagor or one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or

(2) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised, or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances, if any, to which the sale is not made subject, or after payment into court under section fifty-seven of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property or authorized to give receipts for the proceeds of the sale thereof.

Nothing in the former part of this section applies to powers conferred before this Act comes into force.

The powers and provisions contained in sections six to nineteen (both inclusive) of the Trustees and Mortgagees' Powers Act, 1866, shall be deemed to apply to English mortgages, wherever in British India the mortgaged property may be situate, when neither the mortgagor nor the mortgagee is a Hindú, Muhammadan or Buddhist.

7. The replies of the Local Governments have now been received and considered by the Government of India, and the following are the conclusions to which they seem to point.

8. In the first place, as regards the power of exempting from the operation of sections 54, 59, 107 and 123, it seems to the Governor General in Council best to make it simply a power of exempting locally, that is to say, the exemption should be absolute and cover transactions relating to any immoveable property within the specified area, whether both or one or none of the parties may belong to those races or tribes for whose benefit the exemption is intended. To give a personal character to the exemption and restrict it, as some suggest, to transactions within the area, to which either both parties or one of the parties are of particular races, would give rise to uncertainty of title and other difficulties and doubts noticed by Sir C. Turner and others. With a local exemption clause of an absolute character an intending purchaser has to look to nothing but the situation of the property.

9. It is true that there may be advanced people living in exempted localities for whom the sections in question would provide a law more suitable than that which prevails where they do not apply, but it must be remembered that these people always could, and Europeans, it is believed, generally would, follow the practice of having formally executed and registered documents, and this would to a great extent give them the benefits aimed at by the Act; for it must be borne in mind that in the places in question titles would not usually be complicated, and in any case the sections of the Act referred to are not an essential part of the law, but merely an improvement of it, which is not in force as yet in great provinces like Bombay, the Panjáb and British Burma. Again, on the other hand, it is true that there may be members of wild tribes settled in some non-exempted localities, and that they may find it difficult to learn to act up to the law; but, as has been observed by some of the authorities consulted, wild people scattered in this way among a population the great mass of which is civilized soon get into the ways of the people among whom they live.

In either case the objection is one that must apply to most of our enacted laws, and indeed to a good deal of the customary law of the country. We cannot get a law that will suit everybody; we must be content with a reasonably close approximation.

10. The first section of the Bill accordingly amends section 1 of the Act so as to empower a Local Government, with the previous sanction of the Governor General in Council, to exempt any part of the territories under its administration from the operation of any of these sections.

11. Next, as regards the powers to exclude the operation of section 41, the considerations to be borne in mind are fully stated by the Chief Justice of Madras in his opinion.

Sir C. Turner observes that the general rule that no one can confer a higher right in property than he himself possesses in some cases worked obvious hardship; and, as the science of jurisprudence advanced, it was limited by the exception declared in section 41, on the principle that, where one of two innocent persons must suffer from the fraud of a third party, the loss should fall on him who has created or could have prevented the opportunity for the fraud. To races which have not made a substantial progress in civilization, this rule appears to Sir Charles Turner to be unsuited for the following reasons, as stated in his own words:—

"Regarding the question in its sentimental aspect, it is certain that a member of a race unacquainted with the refinements of equity would fail to recognize the justice of a rule which caused him to be deprived of his property by what is *ex hypothesi* a fraud.

"I do not contend that legislation is to be governed by sentimental considerations, but I have heretofore asserted, and still hold, that legislation should only be so far in advance of the general understanding that its justice should be recognized by the more enlightened.

"There is, however, a substantial reason to be deduced from the rule itself, which shows its inapplicability to uncivilized races. The rule affords protection only to a purchaser for consideration who acts in good faith after reasonable inquiry.

"The imposition of these conditions on the purchaser suggests to persons, who have occasion to create an ostensible ownership of their property in others, the prudence of providing certain safeguards. If they are well advised, they are careful to secure evidence of the actual ownership, so that a purchaser, on making due inquiry, must either ascertain the true character of the transaction, or entertain such suspicion of its character that he can no longer assert that he acted in good faith.

"The transactions of uncivilized races in the matter of property are of the simplest character; they are unacquainted with the precautions which technical skill has devised to secure property.

"Again, as society progresses, men are habituated to exercise greater caution in their dealings with their fellows, and have larger opportunities for selecting agents who are reputed either to be worthy of confidence or to be in a position to answer for a breach of confidence. A prudent man selects for an office of trust a person of tried probity and some substance. The uncivilized races have less choice in the selection of agents and less opportunity for forming a judgment of the character and position of their agents."

12. The conclusion to which these remarks seem to point is that the Government should be empowered to direct that section 41 should not apply throughout any particular local

area to any property in which a member of any particular race, sect, tribe or class is interested, and it is on these lines that sub-clause (*b*) of the new fifth clause which the Bill proposes to insert in the first section of the Act has been framed.

13. The discussion regarding section 69 has opened out questions extending beyond the particular difficulty first brought to notice, and it is fortunate that the Government have had in considering them the assistance of Sir C. Turner, who was a member of the Commission by which the Transfer of Property Bill was settled.

The circumstances under which the section was enacted will be found stated in the following extract from his Minute :

"In England, it is usual to confer on a mortgagee, in case of default, a power to sell the mortgaged property without the intervention of a Court of justice ; and, where the instrument of mortgage does not confer the power, but does not in express terms negative it, a mortgagee is empowered by statute to sell on the expiry of twelve months after the date of default and of six months from the date on which notice is given of his intention to exercise the power—23 & 24 Vic., c. 145. This statutory provision was, by Act XXVIII of 1866, extended to mortgages in this country to which the English law is applicable.

"On the other hand, the simple mortgage in India did not authorize a sale without the order of a Court, and by Regulation XVII of 1806 in the Bengal Presidency it had been enacted that a mortgage by conditional sale should not become foreclosed without the service of a notice through the District Court, and on the expiry of a year of grace. Inferring the policy of the legislature from this Regulation, the Sadr Díwání Adálat refused to give effect to an express power of sale—S. D. A., 1847-354. In the Bombay Presidency, Mr. Justice Melville expressed a doubt whether a private sale of property in the Mufassal, effected by a mortgagee under a power, would be valid—VIII Bombay H. C., A. C., 143.

"On the other hand, I entertained the opinion, and I believe acted on it before the Transfer of Property Act came into operation, that, in the absence of a prohibition of law, the owner of property was competent to confer on a mortgagee what powers he himself possessed, and that, if a mortgagor having, as owner, authority to sell, created a power of sale in a mortgagee, and the mortgagee duly exercised the power, the Courts were bound to recognize the validity of the sale.

"*In Bhanoomutty Chawdiam* vs. *Premchund Nesgee,* XV B. L. R. 28, property in the Mufassal had been mortgaged by an instrument in the English form containing a power of sale, and subsequently mortgaged to a third party by a conditional sale. The first mortgagee then exercised his power of sale, and subsequently to the sale the second mortgagee took proceedings to foreclose. It was held that the purchaser under the power was entitled to notice of foreclosure, and impliedly that a sale under a power might be valid."

"In this state of the authorities," Sir Charles Turner continues, "it fell to the Law Commission to offer for the acceptance of the legislature a proposal to settle the law. It was felt that, in accordance with the principles of freedom of contract, an owner of property should be at liberty to confer on a mortgagee any of the powers which he could himself exercise, and that a borrower might more readily obtain accommodation, or obtain it on easier terms, if he could offer a security which would be speedily converted by the tender without the delay and the cost of an application to a Court of justice. On the other hand, it was recognized that in this country the large majority of mortgage-securities are created by persons who are poor and illiterate in favour of more sharpwitted creditors, and that, in an agricultural country, landed securities are subject to sudden and excessive variations in value, which are rarely foreseen by borrowers. The Commission came to the conclusion that, while more wealthy borrowers in the country and all borrowers in the presidency-towns might be left to deal with their property as they pleased, it was necessary in the present state of British India to create a legislative safeguard for the poorer classes in the country. They, therefore, proposed that the creation of a power of sale should be declared invalid except in mortgages where the principal money secured exceeded Rs. 500, or in mortgages to the Secretary of State or in mortgages of property in the presidency-towns. In Committee, the section was recast. Instead of declaring that a power of sale conferred by the instrument of mortgage is invalid except in the cases specified, the section, as it now stands, declares that in certain cases it is valid."

Sir Charles Turner adds—

"Unless it be held that the express declaration of the validity of such a power in certain cases is tantamount to a declaration of its invalidity in other cases, which I incline to doubt, the object sought by the Law Commission has not been attained, and the validity of the power in cases other than those specified is still left an open question.

"It may have been desirable that the protection the Law Commission intended to confer in the case of mortgages for small amounts should have been extended to mortgages for somewhat larger sums, but I think it is to be regretted that the amendment should have been effected in such terms as to leave the question doubtful whether any protection is given to mortgages of any class or amount, and I trust advantage may be taken of the opportunity to

re-consider the provisions of the section. It will be seen that the section, as it now stands, affects only—

"(1) parties to an English mortgage, *i.e.*, a mortgage in the English form, who are not Hindús, Muhammadans or Buddhists (an inexact enumeration of the creeds held by natives of India) ;

"(2) parties to a mortgage to the Secretary of State ;

"(3) parties to mortgages of property in the presidency-towns.

"As the section now stands, I do not see any reason for including it in the class of sections for which certain races may be exempted ; I apprehend it was included before it was recast."

14. Section 4 of the Bill accordingly amends section 69 of the Act so as to express clearly what was actually intended, and no power to exempt from the main provisions of the section has been retained ; but, as Mr Justice Muthuswami Aiyar has pointed out that there are other classes whom it is even more necessary to exclude from the operation of the exceptional provision in clause (*a*) than Hindús, Muhammadans and Buddhists, words have been added to that clause to provide a power of excluding them.

15. Section 2 of the Bill is intended merely to remove a formal defect in the Act which has been brought to notice in the course of the recent discussions. It was of course never intended that the provisions of the Act which assume the existence of a registration system should take effect in those tracts which are excluded from the operation of the Registration Act ; but the Act omitted to make any express provision to that effect, and that omission is now supplied.

16. The addition which it is proposed to make to section 4 of the Act by section 3 of the Bill has for its object merely to remove a difficulty which has been felt in some quarters as to the bearing which the provisions of the Act relating to registration and the Registration Act have on one another.

The 9th August, 1884.

C. P. ILBERT.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 20th August, 1884, and was referred to a Select Committee :—

No. 11 OF 1884.

A Bill to facilitate the construction of Telegraphs, and to amend the Indian Telegraph Act, 1876.

WHEREAS it is expedient to give power to place and maintain telegraph lines and posts under, over, along, across, in or upon immoveable property;

And whereas it is also expedient to amend the Indian Telegraph Act, 1876; 1 of 1876.

It is hereby enacted as follows :—

Preliminary.

1. *(1)* This Act may be called the Indian Telegraph Act, 1884. Short title, local extent and commencement.

(2) It extends to the whole of British India; and

(3) It shall come into force at once :

Provided that nothing in this Act shall affect any right acquired by the Government or a licensee under section 4 of the Indian Telegraph Act, 1876, or any contract entered into before the passing of this Act. 1 of 1876.

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

[cf. 26 & 27 Vic., c. 112, s. 3.] *(1)* "Telegraph line" means a wire or wires used for the purpose of a telegraph as defined in the Indian Telegraph Act, 1876, with any casing, coating, tube or pipe enclosing the same, and any apparatus connected therewith for that purpose. 1 of 1876.

[cf. 26 & 27 Vic., c. 112, s. 3.] *(2)* "Post" means a post, pole, standard, stay, strut or other above-ground contrivance for carrying, suspending or supporting a telegraph line.

[cf. 26 & 27 Vic., c. 112, s. 3.] *(3)* "Telegraph authority" means—

(a) the Director General of Telegraphs or any officer appointed by him in this behalf; and

(b) in respect of any particular matter, any person holding a license from the Governor General in Council under section 4 of the Indian Telegraph Act, 1876, and empowered, by such authority as the Governor General in Council may, from time to time, appoint in this behalf, to discharge the functions of a telegraph authority in respect of that matter. 1 of 1876.

(4) "Local authority" means any municipal committee, local board, body of port commissioners or other body created for the public benefit and legally entitled to any immoveable property or the control thereof.

Power to place Telegraph Lines and Posts.

3. A telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immoveable property, and repair, alter or remove the same : Power for telegraph authority to place and maintain, alter and remove a telegraph line and post.

Provided that—

(*a*) a telegraph authority shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which it places any telegraph line or post; [cf. 26 & 27 Vic., c. 112, s. 6.]

(*b*) in the exercise of the powers conferred by this section, a telegraph authority shall do as little damage as possible; [cf. 26 & 27 Vic., c. 112, s. 7].

(*c*) a telegraph authority shall not exercise those powers in respect of any property vested in or under the control of any local authority except with the consent of the local authority;

(*d*) a telegraph authority shall not exercise those powers in respect of any other property unless it has paid or tendered full compensation to all persons interested for all damage which will be sustained by them by reason or in consequence of the exercise of those powers.

Provisions applicable to Property of Local Authorities.

4. Any consent given by a local authority under section 3 may be given subject to such reasonable conditions as to the payment of any expenses to which it is estimated the local authority will be put in consequence of the exercise of the powers, or as to the time or mode of execution of any work, or as to any other thing Power to local authority to consent under section 3 subject to condition. [cf. 26 & 27 Vic., c. 112, s. 5 (3).]

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connected with or relative to any work, as the local authority giving consent thinks fit to prescribe.

Removal or alteration of telegraph line or post on property of local authority.

5. *(1)* When, under the foregoing provisions of this Act, a telegraph line or post has been placed by a telegraph authority under, over, along, across, in, or upon any property vested in or under the control of a local authority, and the local authority, having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed or altered, the local authority may call upon the telegraph authority to remove or alter it, and, if the telegraph authority refuses or omits to do so, may apply to the Local Government to order its removal or alteration.

(2) A Local Government receiving an application under this section may in its discretion reject the same, or make an order for the removal or alteration of the telegraph line or post, absolutely or subject to such conditions as it thinks fit; and the decision of the Local Government shall be final and conclusive.

Power to alter position of gas or water pipes.

6. A telegraph authority may, for the purpose of exercising the powers conferred upon it by this Act in respect of any property vested in or under the control of a local authority, alter the position thereunder of any pipe (not being a main) for the supply of gas or water:

Provided that—

(*a*) when a telegraph authority desires to alter the position of any such pipe, it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local authority, and, when the pipe is not under the control of the local authority, to the person under whose control the pipe is;

(*b*) a local authority or person receiving notice under clause (*a*) may send a person to superintend the work, and the telegraph authority shall execute the work to the reasonable satisfaction of the person so sent.

Disputes between telegraph authorities and local authorities.

7. If any dispute arises between a telegraph authority and a local authority in consequence of the local authority refusing its consent under section 3 or prescribing any condition under section 4, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by the Local Government, and the decision of the Local Government thereon shall be final and conclusive.

Telegraph line and posts placed before the passing of this Act.

8. A telegraph line or post placed by a telegraph authority before the passing of this Act under, over, along, across, in or upon any property vested in or under the control of a local authority shall be deemed to have been placed in exercise of the powers conferred by this Act.

Provisions applicable to other Property.

Disputes as to compensation under section 3.

9. If any dispute arises concerning the sufficiency of the amount of the compensation paid or tendered under section 3, clause (*d*), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him, and his determination thereof shall be final and conclusive.

Removal or alteration of telegraph line or post on property not belonging to a local authority.

10. *(1)* When, under the foregoing provisions of this Act, a telegraph line or post has been placed by a telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration and call upon the telegraph authority to remove or alter the line or post accordingly, and, if the telegraph authority refuses or omits to do so, may apply to the District Judge within whose jurisdiction the property is situate to order the removal or alteration.

(2) A District Judge receiving an application under this section may, in his discretion, reject the same or make an order absolutely or subject to conditions for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form, and the order so made shall be final and conclusive.

Amendments of the Indian Telegraph Act, 1876.

Amendment of the definition of "telegraph" in Act I of 1876.

11. To the definition of "telegraph" in section 3 of the Indian Telegraph Act, 1876, the following shall be added, namely:— 1 of 1876.

"and includes any apparatus for transmitting or making telegraphic, telephonic or other communications by means of electricity."

Amendment of section 8, clause (*a*), of same Act.

12. To clause *(a)* of section 8 of the same Act the following shall be added, namely:—

"or of any telegraph established by Government and leased to any person."

Addition to section 8 of same Act.

13. To the same section the following words shall be added, namely:—

"When prescribing rules under clause (*a*) of this section, the Governor General in Council may by the rules impose fines for any breach of the same:

"Provided that the fines so imposed shall not exceed the following limits, namely:—

"*(1)* when the licensee or lessee is punishable for the breach, one thousand rupees, and in the case of a continuing breach a further fine of two hundred rupees for every day after the first during the whole or any part of which the breach continues;

"*(2)* when a servant of the licensee or lessee or any other person is punishable for the breach, one-fourth of those amounts."

STATEMENT OF OBJECTS AND REASONS.

THE main object of this Bill is to give power to the Government, and to any company or person licensed under section 4 of the Indian Telegraph Act, 1876, and specially empowered in this behalf, to place telegraph lines under or over property belonging whether to private persons or to public bodies.

2. The attention of the Government has recently been directed to the fact that, as the law now stands, the Governor General in Council and his licensees have no power to place telegraph lines upon the land of municipal or other similar bodies or of private persons. In England the requisite powers are conferred on the Postmaster General, who works and maintains the telegraphs in that country, by 26 & 27 Vic., cap. 112, as amended by 41 & 42 Vic., cap. 76; and as it seems desirable that the Government in which the exclusive privilege of establishing telegraphs in this country is vested should possess somewhat similar powers, the present Bill has been prepared.

3. Section 3 empowers the Government or any company or person licensed under section 4 of the Indian Telegraph Act, 1876, and specially authorized by a Government officer to place and maintain telegraph lines and posts under, over, along, across, in or upon the property of any "person", which term includes a body corporate. It is considered that licensees should have these powers, because the licenses granted always strictly limit the area of the operations of the licensees, and it would be somewhat anomalous for local bodies and private persons to have the power to neutralize the licenses granted by the Governor General in Council by objecting to the licensees' operations, or by hampering them by the exaction of fees for permission to work under their licenses. The powers thus given are, however, to be exercised so as to do as little damage as possible, and their exercise is moreover made subject to important restrictions and conditions.

4. When the property belongs to a municipal board or other local authority, the powers conferred by the Act cannot be exercised over it without the consent of that authority; and that consent may be given subject to conditions. Among other conditions which can be imposed is one requiring that any expenses to which the local authority may be put by the exercise of the power shall be made good; but it will be observed that no provision is made for the payment of compensation on any other account to a local authority whose property is made use of for this purpose, it being considered that, as the construction of telegraphs is a matter in which the public are interested, no charge should be made for accommodation of this sort when it can be granted without inconvenience to the public or expense to the local authority concerned.

5. It may sometimes happen that, though at the time when a telegraph authority desires to exercise its powers over some property of a local authority there may be no reasonable ground for objecting, and the local authority may thus find itself compelled to consent, a state of things may subsequently arise under which the continued exercise of the powers would be felt as a grave public inconvenience or a cause of serious loss. Land, *e.g.*, which was waste at the time the telegraph line was constructed over it might afterwards be required for some important public object or might acquire great value for building purposes, and, as no compensation (except for actual expenses out of pocket) would have been paid to the local authority at the time the line was constructed, it is but just that provision should be made for the removal or alteration of the line in such an event. This accordingly is done by section 5 of the Bill, which empowers the local authority to call upon the telegraph authority to remove or alter its telegraph or post, and, in the event of the telegraph authority refusing or neglecting to do so, gives an appeal to the Local Government.

6. In the event, which it is believed will be rare, of a local authority arbitrarily refusing its consent to the exercise by a telegraph authority of the powers conferred by the Bill or clogging its consent with unreasonable conditions, it will (section 7) be open to the telegraph authority to appeal to the Local Government, whose decision will be final.

7. Turning now to the case in which it may be desired to exercise the powers given by the Bill over the property of private persons, it will be seen that here provision is made for the payment of full compensation, the amount of which in the event of dispute will (section 9) be determined by the Civil Court, and that, in the event of a person upon whose property a telegraph line or post has been placed desiring subsequently to deal with the property in such a way as would make it necessary or convenient that the line or post should be removed to another part of it or to a higher or lower level or altered in form, he can (section 10) tender the cost of the work and call upon the telegraph authority to remove or alter the line or post, and, if that authority refuses to do so, can appeal to the Civil Court.

8. It may be observed, however, that in practice in this country the power of taking telegraph lines through private property is not likely to be exercised either by the Government or by its licensees except on rare occasions, and then as a rule only to the extent of crossing with the wire, a post being scarcely ever erected on private land. Private property has hitherto been always avoided as much as possible, and it is likely to be still more carefully avoided in future if it is made clear, as it is proposed to do by this Bill, that full compensation will have to be paid for exercising the power over private and not for exercising it over public property.

9. The present opportunity has been taken to make three amendments of the Indian Telegraph Act, 1876, which experience has shown to be desirable. The first has for its object the emendation of the definition of "telegraph" so as to bring it into more exact conformity with the construction put upon the definitions in the English Acts by a recent decision of the High Court of Justice in England.

10. The second is intended to provide for the regulation of telegraph lines constructed by the Government but leased to companies or individuals by whom they are worked. The position of such lines under the Act as it at present stands is far from clear, and the object of the amendment proposed in section 12 of the Bill is to put them on much the same footing as licensed lines.

11. The object of the third amendment, which is made by section 13 of the Bill, is to prescribe penalties for the breach of the rules made under section 8 of the Act for the conduct of telegraphs worked under license or lease. In such cases, as the Act now stands, the only remedy is to revoke the license or lease, but this course would in most cases cause such great public inconvenience that it is impracticable. The result is that at present there is virtually no penalty for the infringement of the rules made under section 8 of the Act. To remedy this state of things, the Bill adds a clause to that section empowering the Governor General in Council to prescribe by the rules moderate fines for the breach of them.

The 12th August, 1884.

T. C. HOPE.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Report of the Select Committee on the Bill to make better provision for the organization and administration of Municipalities in the Panjáb was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 6th August, 1884:—

WE, the undersigned Members of the Select Committee to which the Bill to make better provision for the organization and administration of Municipalities in the Panjáb was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

From Officiating Secretary to Government, Panjáb, No. 211, dated 10th April, 1884, and enclosures [Papers No. 1].
From E. vs. Cullin, Esq., dated 27th April, 1884, and enclosure [Papers No. 2].
From Officiating Secretary to Government, Panjáb, No. 688., dated 16th May, 1884, and enclosures [Papers No. 3].
From Officiating Secretary to Government, Panjáb, No. 748., dated 16th May, 1884, and enclosure [Papers No. 4].
From Officiating Secretary to Government, Panjáb, No. 798., dated 21st May, 1884, and enclosure [Papers No. 5].
From Officiating Secretary to Government, Panjáb, No. 888., dated 27th May, 1884, and enclosures [Papers No. 6].
From Officiating Secretary to Government, Panjáb, No. 948., dated 29th May, 1884, and enclosures [Papers No. 7].
From Officiating Secretary to Government, Panjáb, No. 1218., dated 9th June, 1884, and enclosures [Papers No. 8].
Extract from the *Tribune* of 14th June, 1884 [Papers No. 9].

2. Instead of repealing the Panjáb Municipal Act, 1873, and bringing the new law into force at once, as was proposed in the Bill as introduced, we have thought it better (section 4 of the amended Bill) to require the Local Government to apply the new law to any place to which that Act had been extended, unless the Local Government comes to the conclusion, and declares by notification in the official Gazette, that the provisions of the Act are not suited to any such place. The Local Government is at the same time empowered to continue in office the members of the present committees as if they had been elected or appointed under the new law for any term not exceeding three years which it may fix. When the new law is thus made applicable to any place to which the Act of 1873 had been extended, that Act will cease to apply, and other consequences will follow, which are set forth in section 12. In the Supplemental chapter, the Local Government is further empowered to withdraw the area of any municipality from the operation either of Act IV of 1873 or of the new law, if the latter has been made applicable. The Local Government will thus be enabled to abolish any municipality constituted under Act IV of 1873, if it appears undesirable to continue municipal institutions in the area under its control.

3. The provisions as to the term of office of members, the removal of members and the filling up of casual vacancies in the committee have been assimilated, as nearly as possible, to the corresponding provisions in the District Boards Act.

4. On the recommendation of the Local Government, we have by section 14 empowered the Commissioner of a division to approve of the election of a president by a second class committee, and to appoint the president of a committee of this class where the committee is not empowered to elect, or fails or does not desire to exercise the power.

5. The provision in section 25 enabling the president or, in his absence, a vice-president to exercise the powers of the committee in cases of emergency has been limited to the power, at the cost of the municipality, to direct the execution of any work or the doing of any act which he considers necessary for the service or safety of the public; and, when he exercises this power, he is required to report his proceedings to the next following meeting of the committee. Where the case is sufficiently provided for by the rules of business under section 24, as to the exercise of the executive authority of the committee, the extraordinary powers given by section 25 of course will not arise, as there would not then be a case of emergency.

6. In section 27 we have provided that nothing done under the Act should be questioned on account of the existence of a vacancy in a committee or joint committee or of any merely formal defect.

7. We have not retained the provision of the Bill as introduced requiring the sanction of the Commissioner of the division to the removal of a paid secretary, and his sanction to the appointment is confined (section 28) to the appointment of a paid secretary and to

the rate of pay to be allowed, and does not extend to approval of the person selected. The responsibility for appointing a proper person will thus rest exclusively with the committee. In cases, however, in which Government officers were employed in the service of a municipality before the passing of this Bill into law, section 12 provides for their remaining in the service of the new committee, and prohibits their dismissal unless under the sanction of the Local Government.

8. The employment of other officers and servants (when there is available budget provision) is made subject only (section 29) to what is necessary and proper for the efficient execution of the duties of the committee, and to any rules which the Local Government may make as to the employment of persons appointed to offices requiring professional skill; but power is given to the Commissioner of the division, subject to an appeal by the committee to the Local Government (section 30), to require the reduction of excessively large or expensive establishments or of unduly high rates of pay.

9. We have raised the limit of the power of first class committees (section 33) to delegate the authority to enter into contracts on their behalf to 500 rupees, and have required all contracts for larger amounts on behalf of any committee to be sanctioned at a meeting of the committee before they can be entered into. It has been suggested that separate provision is required for contracts which do not fix the quantity of work to be done, but only the rate to be paid per unit of work; but we are of opinion that these contracts can be brought within this section by fixing a maximum limit, not exceeding five hundred rupees, on the sum which may become payable under them.

10. In section 34 the limit of value above which contracts are required to be in writing has been increased from Rs. 20 to Rs. 100 in the case of first class committees, and Rs. 50 in the case of second class committees.

11. The prohibition in section 35 of members, officers or servants of the committee being interested in contracts with the committee, unless with the Commissioner's permission, has been assimilated to section 62 of the District Boards Act.

12. Section 36, which takes the place of section 99 of the Bill as introduced, has been modified so as to require notice to be given of all suits against committees, or against their officers for their official acts; the sub-sections as to limitation and as to tender of amends being omitted as unnecessary. The protection thus given corresponds with that given to Government and to public officers by section 424 of the Civil Procedure Code, except that the notice required is shorter.

13. In the Taxation chapter the taxes which committees are empowered to propose for the general purposes of the Act are brought together in section 39, a higher rate of tax on buildings and lands being allowed in certain scheduled municipalities, all of which are hill-stations, than that which is fixed as the maximum elsewhere.

14. In the second sub-section of section 39 we have defined the expression "annual value" as meaning the gross annual rent for which buildings or lands might reasonably be expected to let, and we have omitted the first proviso, as, though it has been the practice in hill-stations to let houses furnished, the furniture supplied is ordinarily of small value; and as most of us are of opinion that the rent to be considered in estimating the annual value is the sum for which they would let if unfurnished, we have added words making this clear.

15. Special powers are also given to impose a scavenging-tax and a water-tax as payment for services rendered to the occupiers of any buildings or land or for the construction and maintenance of works for the supply of water from which such occupiers may benefit. No special power has been thought necessary to enable committees to charge fees for the use of schools or other public institutions maintained by them, as they may impose any conditions they may think proper upon persons who wish to avail themselves of the benefit of such institutions.

16. We have modified the procedure for imposing and assessing taxes (section 42) by providing that new taxes leviable by the year should not come into force except at the commencement of the year, and other new taxes until at least six months have elapsed from the date of the meeting at which, after the requisite sanction has been obtained, their imposition is directed.

17. We have enabled the Local Government (section 45), where any tax appears unfair in its incidence or injurious to the interests of the public, to require the committee to take the necessary measures to remove the objection and, if it fails to comply with the requisition, to suspend the levy of the tax.

18. We have (section 49) given an appeal against assessments, on account of octroi, as in the case of other taxes, and we have also enabled officers hearing appeals against assessments, if they entertain reasonable doubt on any question as to the liability to, or principle of, the assessment, to state a case for the decision of the Chief Court.

19. We have (section 52) saved taxes leviable under the Municipal Act now in force so far as they are consistent with, and within the powers conferred by, the new law.

20. We have in section 59 conferred upon the committee a power to remit a tax on buildings on certain equitable grounds.

21. We have made taxes on buildings and lands, other than the scavenging-tax and the water-tax, payable by the owner and also a charge upon the property, and have therefore found it unnecessary to make them recoverable from the occupier if not paid by the owner after notice.

22. We have added a section (62) giving power to inspect the contents of a conveyance or package to ascertain whether octroi is payable by having it brought before a Magistrate for the purpose, if the person bringing or receiving it within the municipality refuses to allow the necessary inspection, and have in other respects amended the provisions of the Bill as introduced on the subject of the recovery of octroi.

23. The provisions of the Bill on the subject of the municipal fund and of municipal property have been brought together in a new chapter (Chapter IV). In this chapter we have provided (section 68) for prior charges on the municipal fund for loans, establishment-charges and payments for maintenance of pauper-lunaties, audit of accounts, and services rendered to the committee by Provincial Departments of Government, and have empowered the Local Government to make rules with respect to the relative priority to be given to the other duties of the committee. We have also (section 71) declared certain descriptions of property held for municipal purposes to vest in the committee, and have (section 72) introduced a clause, based on a somewhat similar provision of the Bombay Municipal Act, providing that the administration of every public institution maintained out of municipal funds shall vest in the committee, but that the extent of the independent authority of the committee may be prescribed by the Local Government.

24. The sections relating to municipal police have also been collected in a separate chapter (Chapter V). We have added a section (78) defining the powers and duties of the police in respect of offences against the Act or rules made thereunder. By this section they are empowered to arrest persons committing such offences when necessary, and are required to give immediate information of the commission of such offences to the committee, and to assist members or officers of the committee in the exercise of their lawful authority.

25. Another new chapter (Chapter VI) sets forth the powers of the committee to do, or to require others to do, or to abstain from doing, particular acts. This and the following chapter, which deals with offences affecting the public health, safety or convenience, take the place of the powers to make rules for the prevention of nuisances, and for entry on private property for the detection and abatement of nuisances, given by section 67 of the Bill as introduced, and of the powers to issue injunctions and make conditional orders as to nuisances given by sections 68 to 70, and this chapter also embodies the additional powers to make rules and other powers expressly given by the Bill as introduced.

26. In framing these sections, the existing bye-laws of the principal municipalities, and the detailed Municipal Acts in force in other provinces of British India, have been referred to, and we have endeavoured to give all the powers not elsewhere given in the Bill which it appears to be necessary or proper that Panjáb municipalities should possess. While there may be municipalities in which some of these powers are not required, these municipalities can be excepted by the Local Government under one of the provisions contained in the Supplemental chapter from the sections giving the powers which the circumstances of the municipality render unnecessary.

27. Instead of enabling committees to make rules regulating for sanitary reasons the crops which may be grown within municipal limits, we have, by section 116, empowered the Local Government to prohibit by notification the cultivation of any crop, the use of any manure or the irrigation of land in any manner, which is reported by the Sanitary Commissioner to be injurious to health, or to impose such conditions thereupon as may remove the risk of injury, and have provided for compensation where the practice prohibited was of long standing.

28. In section 117, which relates to the regulation of offensive or dangerous trades, and corresponds with section 74 of the Bill as introduced, we have omitted manufactories of gunpowder or fireworks, which can now be regulated by rules made by the Local Government under the Explosives Act, IV of 1884, and shops for smoking opium, as these must be licensed under the Opium Act, and the Local Government may, if it thinks proper, instruct Deputy Commissioners to consult municipalities before granting a license under that Act.

29. In section 119 we have extended the power given by the Bill as introduced to make rules for the inspection and proper regulation of lodging-houses to houses occupied by members of more than one family, and have stated in greater detail the subjects with which such rules may deal. This power, with that given in section 115, to prohibit the use for human habitation of houses unfit to be so used, will enable committees to exercise more effective control than hitherto over the arrangements for the accommodation of human beings where this appears necessary for the preservation of the public health, and will, it is believed, be of special importance, not only in hill-stations, but in places the population of which is liable to be largely increased at particular seasons by the resort of pilgrims or the holding of large fairs.

30. Chapter VII provides for the punishment of certain offences affecting the public health, safety and convenience and of disobedience to orders given by the committee under the powers conferred by the preceding chapter.

31. In Chapter VIII, which deals with control, the changes made have been in the direction of assimilation with the provisions of the Panjáb District Boards Act. We have also revised the list of subjects on which the Local Government is empowered to make rules.

32. In the Supplemental chapter (Chapter IX) we have added provisions that copies of rules should be kept by committees available for inspection and for sale to the public (section 160); that rules or bye-laws made under the Panjáb Municipal Act, 1873, should, so far as consistent with, and within the powers conferred by, this Bill, continue in force until repealed by new rules, which the proper authority is required to make and take the necessary steps for bringing into force so soon as may be (section 161); and we have included provisions for altering the boundaries of municipalities or the class to which they belong (sections 165 to 169), for excepting them from the operation of such parts of the Bill as are not suited to their circumstances (section 170), and for withdrawing them from the operation of the law relating to municipalities (section 171).

33. A special section applicable only to Simla (section 177) has also been added to save the land-tax which has been substituted for the ground-rent formerly charged by Government, and which is levied concurrently with a tax on the annual value of property.

34. The publication ordered by the Council has been made as follows :—

In English.

Gazette.			*Date.*
Gazette of India	...	...	2nd, 9th and 16th June, 1883.
Panjáb Government Gazette	...	...	7th, 14th and 21st June, 1883.

In the Vernaculars.

Province.	*Language.*	*Date.*
Panjáb	... Urdu	... 2nd, 9th and 16th July, 1883.

35. We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

D. G. BARKLEY.
J. GIBBS.
C. P. ILBERT.
T. C. HOPE.

I HAVE not signed this Report, as, though originally appointed a Member of the Select Committee, I was unable to be present at any of the meetings.

J. W. QUINTON.

The 5th August, 1884.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 27th August, 1884, and was referred to a Select Committee :—

No. 12 OF 1884.

A Bill to provide more effectually for the suppression of certain forms of Gaming in British Burma.

WHEREAS it is expedient to provide more effectually for the suppression of certain forms of gaming in British Burma; It is hereby enacted as follows :—

Short title, extent and commencement.

1. *(1)* This Act may be called the Burma Gaming Act, 1884.

(2) It extends to all the territories for the time being under the administration of the Chief Commissioner of British Burma; and

(3) It shall come into force at once.

Game of *ti* and like games to be deemed lotteries.

2. The game known as "*ti*," and every other game or pretended game of a like nature, shall be deemed a lottery within the meaning of section 294A of the Indian Penal Code.

XLV of 1860.

Application of Act III of 1867 to game of *ti* and like games.

3. *(1)* Taking part in the game of "*ti*," or in any other game or pretended game of a like nature, shall also be deemed gaming within the meaning of Act III of 1867.

(2) Every house, walled enclosure, room or other place, whether public or private, where any such game or pretended game is carried on, shall, for the purposes of that Act, be deemed a common gaming-house, and all expressions referring to the use of any such place as a common gaming-house shall include the use thereof for any such game or pretended game on a single occasion.

(3) All boxes, receptacles, lists, papers, tickets and forms used for the purpose of any such game or pretended game shall be deemed instruments of gaming within the meaning of the said Act.

Penalty on conducting game of *ti* and like games.

4. Whoever conducts or assists in conducting the game of "*ti*," or any other game or pretended game of a like nature, as manager, stakeholder or *daing*, or who is according to the rules of the game or pretended game entitled to receive the surplus proceeds, or any part of the surplus proceeds, of the stakes, after deducting the amount payable to the successful player or players, shall be punished with imprisonment for a term which may for a first offence extend to six months, and for a subsequent offence to two years, or with fine, or with both.

Power to extend local application of Act III of 1867 within British Burma.

5. *(1)* **The Chief Commissioner may, from time** to time, by notification published in the official Gazette, extend to the whole or any part of the territories for the time being under his administration any such of the provisions of Act III of 1867 as do not for the time being extend thereto. [See Act III of 1867, ss. 1 and 2.]

(2) From the date of any such extension so much of any rule having the force of law in operation in the territories to which the extension is made as is inconsistent with or repugnant to any provision so extended shall cease to have effect in those territories.

Power to demand security.

6. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or, when he is specially empowered in this behalf by the Local Government, a Magistrate of the first class receives information that any person within the local limits of his jurisdiction earns his livelihood, wholly or in part, by carrying on, or assisting in carrying on, the game of *ti*, or any other game or pretended game of a like nature, he may deal with such person as nearly as may be as if the information received about him were of the description mentioned in section 110 of the Code of Criminal Procedure; and for the purposes of any proceeding under this section the fact that a person earns his livelihood as aforesaid may be proved by evidence of general repute or otherwise. [See C. C. P., s. 110.]

X of 1882. [Act X of 1882, s. 117.]

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide more effectually for the suppression of certain forms of gaming in British Burma.

2. It has long been the opinion of the most experienced District and Police Officers that the systematic gambling originally introduced by the low class Chinese who infest the towns and villages, and now carried on by them and by Burmans of a similar stamp, is doing great injury to the people of that province. In 1882, on the representation of the Inspector-General of Police of the prevalence of *tis* and of the inadequacy of the law to repress them effectually, the matter was taken up by the Chief Commissioner, who by a Resolution directed Commissioners to obtain an expression of public opinion on the question. With the Resolution were circulated various papers bearing on the subject, including a Bill for the suppression of unlawful gaming which was before the legislature of the Straits Settlements. Special inquiry was made as to whether the people of Burma desired, and were prepared to accept, a stringent gaming law similar to that Bill.

3. The answers showed clearly that the Burmans as a body regarded the prevalence of gambling, especially as practised in the *ti*,* as a very great evil. Government officers were almost equally strong in their denunciations of these *tis*. With a few exceptions the opinions received were in favour of suppressing this and other forms of public gaming, and the Bill proposed for the Straits Settlements was accepted as a guide to the direction which legislation should take.

4. The history of the means which the Courts have hitherto used to check the opening of *tis* is briefly as follows. For some years after the passing of Act III of 1867 it was held that a *ti* was a form of gaming, and that the lists and papers used in the *ti* were instruments of gaming, within the meaning of that Act. This view was confirmed by the High Court of Calcutta in 1869. In 1876 Mr. Wilkinson and Mr. Quinton, as Judges of the Special Court of British Burma, held that *tis* were lotteries, and that, since the enactment of section 294A of the Indian Penal Code, lotteries were punishable under that section and not under Act III of 1867. It is not clear what effect the learned Judges of the Special Court gave to section 15 of Act XXVII of 1870, the Act by which section 294A of the Indian Penal Code was enacted. However, since the date of this judgment, the prosecution of the promoters of *tis* under Act III of 1867 may be said to have ceased; *tis* have been regarded as lotteries and the persons concerned in them have been prosecuted under section 294A of the Indian Penal Code; and until lately no doubt of the applicability of that section to this particular kind of gambling has arisen.

5. Two recent rulings of the Judicial Commissioner have presented a different view of the law. In the first of the cases in question the accused had been convicted by the Magistrate, under section 13 of Act III of 1867, as having been engaged in a *ti* in a *zayat* or public rest-house beside a public road. The Judicial Commissioner called for the proceedings, and, having come to the conclusion that a *ti* was not a game of chance and was mere betting or wagering, he referred the matter to the Special Court. The Officiating Recorder, Mr. Allen, dissented from the Judicial Commissioner's opinion, and held that the conviction was right. Under the constitution of the Special Court the opinion of the referring Judge prevails. The Judicial Commissioner accordingly issued a circular in which his own view of the law is enjoined on the Courts subordinate to him,—in other words, on all Courts outside the jurisdiction of the Recorder of Rangoon,—and in which he lays down the doctrine that a *ti* is not a game nor a lottery, and that the papers used in collecting the money of the persons who take part in the *ti* are wrongly described as lottery-tickets. In the second of these cases the accused had been convicted by the Magistrate at Rangoon under section 294A of the Penal Code of keeping a lottery-office. On appeal to the Officiating Recorder, that officer referred the question of whether a *ti* is a lottery to the Special Court. The Judicial Commissioner held that it was not; the Officiating Recorder that it was. In this case also the opinion of the referring Judge prevailed. The Judicial Commissioner, however, has informed the Courts subordinate to him that his own view of the law is to be their guide. There are thus two contradictory judgments of the Special Court, and two diverse rules of law established for different parts of the province, each Judge holding to his own individual opinion.

6. The object of the present Bill is to obviate the effect of the judgments and circulars of the Judicial Commissioner above referred to, which bar all prosecutions for *ti*-gaming, and the effect of which has already been to give a fresh impetus to that kind of gambling.

It has not been thought expedient to copy the measure proposed by the Government of the Straits Settlements. The draft Ordinance is a very complicated piece of legislation, very stringent in its provisions, and very likely, unless worked under closer supervision than can be given to it in Burma, to become an engine of oppression. Moreover, it does not seem either necessary or desirable to endeavour to check gambling of every kind. A people like the Burmese must have amusement of some sort. It is quite possible to make gambling an expensive amusement, but to stop it altogether, if the people wish to indulge in it, is beyond the power of the law, and the attempt to do it would probably only result in systematic bribery and the corruption of the police. What appears to be chiefly needed is the repression of the professional *ti*-gambler, the man who makes his living by going about inducing people to game and as often as not swindling them out of their money. The urgent requisite is a law which will enable the authorities to deal with professional gamblers, and all who aid and abet them, with prompt severity, wherever they may be found. For other purposes the Act of 1867 appears to be sufficient, nor does the extension of all its provisions to the province generally appear even to be necessary.

* The nature of the game or lottery or series of bets called *ti* is as follows:—The banker, or professional gambler, who makes his living by the game, chooses one of 36 animals and deposits a piece of paper on which its name is written in a hollow bamboo or box. Then his emissaries go round asking people to name the animal so chosen and to back their guess by putting down their money. Any one who guesses rightly gets thirty times his stake; the others lose.

7. The present Bill has, therefore, been framed so as to deal particularly with *ti*-gaming, for which fresh legislation is urgently required.

Section 2 removes the doubt which has been felt as to the construction of section 294A of the Penal Code, by declaring the game of "*ti*" and other like games to be "lotteries" within the meaning of that section.

Section 3 similarly removes the doubt which has been felt as to the construction of Act III of 1867, by declaring that taking part in the game of "*ti*" and other like games shall be deemed to be "gaming" within the meaning of that Act. It also contains other provisions the chief effect of which will be to make it an offence to take part in such games in a private as well as in a public place.

The penalties imposed by section 4 on those who, as managers, *daings*, &c., conduct or assist in conducting such games have been advisedly made severe. Experience has shown that nothing but great severity of punishment will suffice to check this profitable form of gambling.

Section 6 of the Bill gives power to the Courts to demand security from persons who notoriously earn their living; or part of their living, by gaming of this description. The necessity for this provision arises to some extent from the fact that gambling of the kind which it is the object of the proposed enactment to suppress has been held to be an ostensible means of subsistence within the meaning of the Code of Criminal Procedure.

If this Bill becomes law, the powers in the hands of the authorities for the suppression of gambling will, it is believed, be sufficient and will at the same time be such as to secure, it may be confidently hoped, the desired results without risk of oppression.

The 20th August, 1884.

C. P. ILBERT.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, SEPTEMBER 6, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 20th August, 1884, and was referred to a Select Committee :—

No. 9 OF 1884.

A Bill to legalize the discharge by the Lieutenant-Governor of the North-Western Provinces of certain functions assigned to the Governor General in Council.

WHEREAS certain functions which are by enactments in force in the North-Western Provinces assigned to the Governor General in Council are in practice discharged by the Lieutenant-Governor of those Provinces, and it is expedient that these functions should continue to be so discharged, and that their discharge in the past should be legalized;

It is hereby enacted as follows :—

Transfer to Lieutenant-Governor of certain functions of Governor General in Council.

The sections of the enactments hereto scheduled which are specified in the third column of the schedule shall have effect, and, so far as may be necessary to validate anything heretofore done under them by the Lieutenant-Governor of the North-Western Provinces, shall be deemed to have had effect, as if the Lieutenant-Governor of the North-Western Provinces were therein referred to instead of the Governor General in Council.

THE SCHEDULE.

(a) Regulations of the Bengal Code.

Number and year.	Subject.	Section.
V of 1799	To limit the interference of the Zilá and City Courts of Díwání Adálat in the execution of wills and administration to the estates of persons dying intestate.	7
II of 1800	For laying open to public use the stone-quarries at Chunar, Gházipur and Mirzapur, in the Province of Benares, subject to a fixed duty.	10 & 14
IX of 1833.	To modify certain portions of Regulation VII of 1832 and Regulation IV of 1828; to provide for the more speedy and satisfactory decision of judicial questions cognizable by officers of Revenue employed in making settlements under the above Regulations; for enforcing the production of the village accounts; for the more extensive employment of native agency in the Revenue Department; and to declare the intent of section 5, Regulation VII of 1822, touching claims to málikána.	16, 17 & 25

(b) Act of the Governor General in Council.

Number and year.	Subject.	Section.
XII of 1856.	To amend the law respecting the employment of amíns of the Civil Courts in the Presidency of Fort William.	2

STATEMENT OF OBJECTS AND REASONS.

UNDER certain enactments in force in the North-Western Provinces certain functions are assigned to the Governor General in Council, which in practice are now discharged by the Lieutenant-Governor of those provinces. Thus, by sections 10 and 14 of Bengal Regulation XXXIII of 1800 (*for laying open to public use the stone-quarries at Chunar, Gházipur and Mirzapur, in the Province of Benares, subject to a fixed duty*), the Governor General in Council is empowered to sanction the allowances and establishment of the dároghas of the stone-quarries referred to, to fix the rate of duty payable in respect of stone excavated from those quarries, and to make further rules respecting the quarries. As these quarries have now become Provincial both financially and administratively, they have long been under the control of the Local Government, which has been in the habit of exercising the powers above noticed, though they are by law assigned to the Governor General in Council.

2. As the discharge by the Lieutenant-Governor of the North-Western Provinces of these and similar functions assigned by other enactments to the Governor General in Council, though in accordance with existing administrative arrangements, would seem to be of doubtful legality, the present Bill has been prepared with the object of empowering the Lieutenant-Governor to continue to discharge these functions in the future and legalizing their discharge by him in the past.

C. P. ILBERT.

The 4th August, 1884.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 20th August, 1884, and was referred to a Select Committee :—

No. 10 OF 1884.

A Bill to amend the Transfer of Property Act, 1882.

WHEREAS it is expedient to amend the Transfer of Property Act, 1882; It is hereby enacted as follows :— IV of 1882.

1. For the fifth clause of section 1 of the said Act the following shall be substituted, namely :— Amendment of section 1 of Act IV of 1882.

"And any Local Government may, with the previous sanction of the Governor General in Council, from time to time, by notification in the local official Gazette,—

"(*a*) exempt, either retrospectively or prospectively, any part of the territories administered by such Local Government from all or any of the following provisions, namely :—

"Sections fifty-four, paragraphs two and three, fifty-nine, one-hundred and seven and one hundred and twenty-three; or

"(*b*) direct, either retrospectively or prospectively, that section forty-one shall not apply throughout any part of those territories to any property in which a member of any race, sect, tribe or class specified in the notification is interested."

2. The following clause shall be deemed to have been added to the first section of the said Act from the date on which it came into force, namely :— Addition to same section.

"Notwithstanding anything in the foregoing part of this section, sections fifty-four, paragraphs two and three, fifty-nine, one hundred and seven and one hundred and twenty-three shall not extend or be extended to any district or tract of country excluded from the operation of the Indian Registration Act, 1877, under the power conferred by the first section of that Act or otherwise." III of 1877.

3. To section 4 of the said Act the following shall be added, namely :— Addition to section 4 of same Act.

"And sections fifty-four, paragraphs two and three, fifty-nine, one hundred and seven and one hundred and twenty-three shall be read as supplemental to the Indian Registration Act, 1877." III of 1877.

4. In section 69 of the said Act— Amendment of section 69 of same Act.

(*a*) after the words "is valid in the following cases" the words "and in no others" shall be inserted; and

(*b*) after the words "Hindu, Muhammadan or Buddhist," in both places where they occur, there shall be inserted the words "or a member of any other race, sect, tribe or class from time to time specified by the Local Government, with the previous sanction of the Governor General in Council, in the local official Gazette in this behalf."

STATEMENT OF OBJECTS AND REASONS.

THE last clause of section 1 of the Transfer of Property Act, 1882, provides that any Local Government may, with the previous sanction of the Governor General in Council, exempt, either retrospectively or prospectively, throughout the whole or any part of the territories administered by such Local Government, the members of any race, sect, tribe or class from all or any of the following provisions, namely, sections 41, 54 (paragraphs 2 and 3), 59, 69, 107 and 123.

54. * * Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

59. Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by an instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karachí and Rangoon, by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

107. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immoveable property may be made either by an instrument or by oral agreement.

123. For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

2. In a letter, dated the 6th September, 1882, the Chief Commissioner of Assam asked for an expression of opinion from the Government of India as to the effect which the exemption under that clause, of "any race, sect, tribe or class" from the provisions of section 54 (paragraphs 2 and 3) and sections 59, 107 and 123, which are set out on the margin, has upon transactions, one of the parties concerned in which is a member of such race, sect, tribe or class, while the other party does not belong to an exempted class.

3. To this reference the Government of India, on the 13th December, 1882, replied that the precise manner in which the exemption would operate under the circumstances described was a matter of some difficulty; and the only satisfactory means by which an intelligible operation might be given to section 1 of the Act seemed to be the amendment of that section so as to make the exemption from sections 54, 59, 107 and 123 local and not personal.

4. The Chief Commissioner, in a letter dated 12th January, 1883, suggested as an alternative, and in his opinion a preferable one, a power to exempt not persons or places but transactions in which one or both of the parties might be members of the race, sect, tribe or class for which the sections in question might be deemed unsuitable.

5. It was thought desirable to obtain the opinions of the other Local Governments on the two alternative proposals thus put forward, and accordingly, on the 7th May, 1883, a circular was issued for this purpose.

6. It will be observed that the question thus raised was confined to the power conferred by section 1 of the Act to exempt from the operation of sections 54, 59, 107 and 123; but, attention having been once drawn to the subject, it was natural that the effect of an exemption from the other two sections of the Act (41 and 69) mentioned in section 1 and set out in the margin should also be considered; and, on looking into the matter, it was found that, while an exemption under either of those sections would give rise to questions very similar to those raised by the Chief Commissioner of Assam in the case of the sections referred to by him, there was this further difficulty in regard to section 69 that the object of allowing any power to exempt from it was not apparent. The circular accordingly asked for the opinions of the Local Governments in regard to these sections also.

41. Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

69. A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property, or any part thereof, without the intervention of the Court, is valid in the following cases (namely)—

(*a*) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindú, Muhammadan or Buddhist;

(*b*) where the mortgagee is the Secretary of State for India in Council;

(*c*) where the mortgaged property or any part thereof is situate within the towns of Calcutta, Madras, Bombay, Karáchí or Rangoon.

But no such power shall be exercised unless and until—

(1) notice in writing requiring payment of the principal money has been served on the mortgagor or one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or

(2) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised, or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances, if any, to which the sale is not made subject, or after payment into court under section fifty-seven of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property or authorized to give receipts for the proceeds of the sale thereof.

Nothing in the former part of this section applies to powers conferred before this Act comes into force.

The powers and provisions contained in sections six to nineteen (both inclusive) of the Trustees and Mortgagees' Powers Act, 1866, shall be deemed to apply to English mortgages, wherever in British India the mortgaged property may be situate, when neither the mortgagor nor the mortgagee is a Hindú, Muhammadan or Buddhist.

7. The replies of the Local Governments have now been received and considered by the Government of India, and the following are the conclusions to which they seem to point.

8. In the first place, as regards the power of exempting from the operation of sections 54, 59, 107 and 123, it seems to the Governor General in Council best to make it simply a power of exempting locally, that is to say, the exemption should be absolute and cover transactions relating to any immoveable property within the specified area, whether both or one or none of the parties may belong to those races or tribes for whose benefit the exemption is intended. To give a personal character to the exemption and restrict it, as some suggest, to transactions within the area, to which either both parties or one of the parties are of particular races, would give rise to uncertainty of title and other difficulties and doubts noticed by Sir C. Turner and others. With a local exemption clause of an absolute character an intending purchaser has to look to nothing but the situation of the property.

9. It is true that there may be advanced people living in exempted localities for whom the sections in question would provide a law more suitable than that which prevails where they do not apply, but it must be remembered that these people always could, and Europeans, it is believed, generally would, follow the practice of having formally executed and registered documents, and this would to a great extent give them the benefits aimed at by the Act; for it must be borne in mind that in the places in question titles would not usually be complicated, and in any case the sections of the Act referred to are not an essential part of the law, but merely an improvement of it, which is not in force as yet in great provinces like Bombay, the Panjáb and British Burma. Again, on the other hand, it is true that there may be members of wild tribes settled in some non-exempted localities, and that they may find it difficult to learn to act up to the law; but, as has been observed by some of the authorities consulted, wild people scattered in this way among a population the great mass of which is civilized soon get into the ways of the people among whom they live.

In either case the objection is one that must apply to most of our enacted laws, and indeed to a good deal of the customary law of the country. We cannot get a law that will suit everybody; we must be content with a reasonably close approximation.

10. The first section of the Bill accordingly amends section 1 of the Act so as to empower a Local Government, with the previous sanction of the Governor General in Council, to exempt any part of the territories under its administration from the operation of any of these sections.

11. Next, as regards the powers to exclude the operation of section 41, the considerations to be borne in mind are fully stated by the Chief Justice of Madras in his opinion.

Sir C. Turner observes that the general rule that no one can confer a higher right in property than he himself possesses in some cases worked obvious hardship; and, as the science of jurisprudence advanced, it was limited by the exception declared in section 41, on the principle that, where one of two innocent persons must suffer from the fraud of a third party, the loss should fall on him who has created or could have prevented the opportunity for the fraud. To races which have not made a substantial progress in civilization, this rule appears to Sir Charles Turner to be unsuited for the following reasons, as stated in his own words:—

"Regarding the question in its sentimental aspect, it is certain that a member of a race unacquainted with the refinements of equity would fail to recognize the justice of a rule which caused him to be deprived of his property by what is *ex hypothesi* a fraud.

"I do not contend that legislation is to be governed by sentimental considerations, but I have heretofore asserted, and still hold, that legislation should only be so far in advance of the general understanding that its justice should be recognized by the more enlightened.

"There is, however, a substantial reason to be deduced from the rule itself, which shows its inapplicability to uncivilized races. The rule affords protection only to a purchaser for consideration who acts in good faith after reasonable inquiry.

"The imposition of these conditions on the purchaser suggests to persons, who have occasion to create an ostensible ownership of their property in others, the prudence of providing certain safeguards. If they are well advised, they are careful to secure evidence of the actual ownership, so that a purchaser, on making due inquiry, must either ascertain the true character of the transaction, or entertain such suspicion of its character that he can no longer assert that he acted in good faith.

"The transactions of uncivilized races in the matter of property are of the simplest character; they are unacquainted with the precautions which technical skill has devised to secure property.

"Again, as society progresses, men are habituated to exercise greater caution in their dealings with their fellows, and have larger opportunities for selecting agents who are reputed either to be worthy of confidence or to be in a position to answer for a breach of confidence. A prudent man selects for an office of trust a person of tried probity and some substance. The uncivilized races have less choice in the selection of agents and less opportunity for forming a judgment of the character and position of their agents."

12. The conclusion to which these remarks seem to point is that the Government should be empowered to direct that section 41 should not apply throughout any particular local

area to any property in which a member of any particular race, sect, tribe or class is interested, and it is on these lines that sub-clause (*b*) of the new fifth clause which the Bill proposes to insert in the first section of the Act has been framed.

13. The discussion regarding section 69 has opened out questions extending beyond the particular difficulty first brought to notice, and it is fortunate that the Government have had in considering them the assistance of Sir C. Turner, who was a member of the Commission by which the Transfer of Property Bill was settled.

The circumstances under which the section was enacted will be found stated in the following extract from his Minute:

"In England, it is usual to confer on a mortgagee, in case of default, a power to sell the mortgaged property without the intervention of a Court of justice; and, where the instrument of mortgage does not confer the power, but does not in express terms negative it, a mortgagee is empowered by statute to sell on the expiry of twelve months after the date of default and of six months from the date on which notice is given of his intention to exercise the power—23 & 24 Vic., c. 145. This statutory provision was, by Act XXVIII of 1866, extended to mortgages in this country to which the English law is applicable.

"On the other hand, the simple mortgage in India did not authorize a sale without the order of a Court, and by Regulation XVII of 1806 in the Bengal Presidency it had been enacted that a mortgage by conditional sale should not become foreclosed without the service of a notice through the District Court, and on the expiry of a year of grace. Inferring the policy of the legislature from this Regulation, the Sadr Diwání Adálat refused to give effect to an express power of sale—S. D. A., 1847-551. In the Bombay Presidency, Mr. Justice Melville expressed a doubt whether a private sale of property in the Mufassal, effected by a mortgagee under a power, would be valid—VIII Bombay H. C., A. C., 113.

"On the other hand, I entertained the opinion, and I believe acted on it before the Transfer of Property Act came into operation, that, in the absence of a prohibition of law, the owner of property was competent to confer on a mortgagee what powers he himself possessed, and that, if a mortgagor having, as owner, authority to sell, created a power of sale in a mortgagee, and the mortgagee duly exercised the power, the Courts were bound to recognize the validity of the sale.

"*In Bhanoomulty Chowdiam* vs. *Premchund Nesgee*, XV B. L. R. 28, property in the Mufassal had been mortgaged by an instrument in the English form containing a power of sale, and subsequently mortgaged to a third party by a conditional sale. The first mortgagee then exercised his power of sale, and subsequently to the sale the second mortgagee took proceedings to foreclose. It was held that the purchaser under the power was entitled to notice of foreclosure, and impliedly that a sale under a power might be valid."

"In this state of the authorities," Sir Charles Turner continues, "it fell to the Law Commission to offer for the acceptance of the legislature a proposal to settle the law. It was felt that, in accordance with the principles of freedom of contract, an owner of property should be at liberty to confer on a mortgagee any of the powers which he could himself exercise, and that a borrower might more readily obtain accommodation, or obtain it on easier terms, if he could offer a security which would be speedily converted by the tender without the delay and the cost of an application to a Court of justice. On the other hand, it was recognized that in this country the large majority of mortgage-securities are created by persons who are poor and illiterate in favour of more sharpwitted creditors, and that, in an agricultural country, landed securities are subject to sudden and excessive variations in value, which are rarely foreseen by borrowers. The Commission came to the conclusion that, while more wealthy borrowers in the country and all borrowers in the presidency-towns might be left to deal with their property as they pleased, it was necessary in the present state of British India to create a legislative safeguard for the poorer classes in the country. They, therefore, proposed that the creation of a power of sale should be declared invalid except in mortgages where the principal money secured exceeded Rs. 500, or in mortgages to the Secretary of State or in mortgages of property in the presidency-towns. In Committee, the section was recast. Instead of declaring that a power of sale conferred by the instrument of mortgage is invalid except in the cases specified, the section, as it now stands, declares that in certain cases it is valid."

Sir Charles Turner adds—

"Unless it be held that the express declaration of the validity of such a power in certain cases is tantamount to a declaration of its invalidity in other cases, which I incline to doubt, the object sought by the Law Commission has not been attained, and the validity of the power in cases other than those specified is still left an open question.

"It may have been desirable that the protection the Law Commission intended to confer in the case of mortgages for small amounts should have been extended to mortgages for somewhat larger sums, but I think it is to be regretted that the amendment should have been effected in such terms as to leave the question doubtful whether any protection is given to mortgages of any class or amount, and I trust advantage may be taken of the opportunity to re-consider the provisions of the section. It will be seen that the section, as it now stands, affects only—

"(1) parties to an English mortgage, *i.e.*, a mortgage in the English form, who are not Hindús, Muhammadans or Buddhists (an inexact enumeration of the creeds held by natives of India);

"(2) parties to a mortgage to the Secretary of State;

"(3) parties to mortgages of property in the presidency-towns.

"As the section now stands, I do not see any reason for including it in the class of sections for which certain races may be exempted; I apprehend it was included before it was recast."

14. Section 4 of the Bill accordingly amends section 69 of the Act so as to express clearly what was actually intended, and no power to exempt from the main provisions of the section has been retained; but, as Mr Justice Muthuswami Aiyar has pointed out that there are other classes whom it is even more necessary to exclude from the operation of the exceptional provision in clause (*a*) than Hindús, Muhammadans and Buddhists, words have been added to that clause to provide a power of excluding them.

15. Section 2 of the Bill is intended merely to remove a formal defect in the Act which has been brought to notice in the course of the recent discussions. It was of course never intended that the provisions of the Act which assume the existence of a registration system should take effect in those tracts which are excluded from the operation of the Registration Act; but the Act omitted to make any express provision to that effect, and that omission is now supplied.

16. The addition which it is proposed to make to section 4 of the Act by section 3 of the Bill has for its object merely to remove a difficulty which has been felt in some quarters as to the bearing which the provisions of the Act relating to registration and the Registration Act have on one another.

The 9th August, 1884.

C. P. ILBERT.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 20th August, 1884, and was referred to a Select Committee :—

No. 11 OF 1884.

A Bill to facilitate the construction of Telegraphs, and to amend the Indian Telegraph Act, 1876.

WHEREAS it is expedient to give power to place and maintain telegraph lines and posts under, over, along, across, in or upon immoveable property;

And whereas it is also expedient to amend the Indian Telegraph Act, 1876; of 1876.

It is hereby enacted as follows :—

Preliminary.

1. *(1)* This Act may be called the Indian Telegraph Act, 1884. Short title, local extent and commencement.

(2) It extends to the whole of British India; and

(3) It shall come into force at once :

Provided that nothing in this Act shall affect any right acquired by the Government or a licensee under section 4 of the Indian Telegraph Act, 1876, or any contract entered into before the passing of this Act. I of 1876.

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

[cf. 26 & 27 Vic., c. 112, s. 3.] 1 of 1876. *(1)* "Telegraph line" means a wire or wires used for the purpose of a telegraph as defined in the Indian Telegraph Act, 1876, with any casing, coating, tube or pipe enclosing the same, and any apparatus connected therewith for that purpose.

[cf. 26 & 27 Vic., c. 112, s. 3.] *(2)* "Post" means a post, pole, standard, stay, strut or other above-ground contrivance for carrying, suspending or supporting a telegraph line.

[cf. 26 & 27 Vic., c. 112, s. 3.] *(3)* "Telegraph authority" means—

(a) the Director General of Telegraphs or any officer appointed by him in this behalf; and

(b) in respect of any particular matter, any person holding a license from the Governor General in Council under section 4 of the Indian Telegraph Act, 1876, and empowered, by such authority as the Governor General in Council may, from time to time, appoint in this behalf, to discharge the functions of a telegraph authority in respect of that matter. I of 1876.

(4) "Local authority" means any municipal committee, local board, body of port commissioners or other body created for the public benefit and legally entitled to any immoveable property or the control thereof.

Power to place Telegraph Lines and Posts.

3. A telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immoveable property, and repair, alter or remove the same : Power for telegraph authority to place and maintain, alter and remove a telegraph line and post.

Provided that—

(*a*) a telegraph authority shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which it places any telegraph line or post; [cf. 26 & 27 Vic., c. 112, s. 6.]

(*b*) in the exercise of the powers conferred by this section, a telegraph authority shall do as little damage as possible; [cf. 26 & 27 Vic., c. 112, s. 7].

(*c*) a telegraph authority shall not exercise those powers in respect of any property vested in or under the control of any local authority except with the consent of the local authority;

(*d*) a telegraph authority shall not exercise those powers in respect of any other property unless it has paid or tendered full compensation to all persons interested for all damage which will be sustained by them by reason or in consequence of the exercise of those powers.

Provisions applicable to Property of Local Authorities.

4. Any consent given by a local authority under section 3 may be given subject to such reasonable conditions as to the payment of any expenses to which it is estimated the local authority will be put in consequence of the exercise of the powers, or as to the time or mode of execution of any work, or as to any other thing Power to local authority to consent under section 3 subject to condition. [cf. 26 & 27 Vic., c. 112, s. 5 (3).]

connected with or relative to any work, as the local authority giving consent thinks fit to prescribe.

Removal or alteration of telegraph line or post on property of local authority.

5. *(1)* When, under the foregoing provisions of this Act, a telegraph line or post has been placed by a telegraph authority under, over, along, across, in, or upon any property vested in or under the control of a local authority, and the local authority, having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed or altered, the local authority may call upon the telegraph authority to remove or alter it, and, if the telegraph authority refuses or omits to do so, may apply to the Local Government to order its removal or alteration.

(2) A Local Government receiving an application under this section may in its discretion reject the same, or make an order for the removal or alteration of the telegraph line or post, absolutely or subject to such conditions as it thinks fit; and the decision of the Local Government shall be final and conclusive.

Power to alter position of gas or water pipes.

6. A telegraph authority may, for the purpose of exercising the powers conferred upon it by this Act in respect of any property vested in or under the control of a local authority, alter the position thereunder of any pipe (not being a main) for the supply of gas or water:

Provided that—

(*a*) when a telegraph authority desires to alter the position of any such pipe, it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local authority, and, when the pipe is not under the control of the local authority, to the person under whose control the pipe is;

(*b*) a local authority or person receiving notice under clause (*a*) may send a person to superintend the work, and the telegraph authority shall execute the work to the reasonable satisfaction of the person so sent.

Disputes between telegraph authorities and local authorities.

7. If any dispute arises between a telegraph authority and a local authority in consequence of the local authority refusing its consent under section 3 or prescribing any condition under section 4, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by the Local Government, and the decision of the Local Government thereon shall be final and conclusive.

Telegraph line and posts placed before the passing of this Act.

8. A telegraph line or post placed by a telegraph authority before the passing of this Act under, over, along, across, in or upon any property vested in or under the control of a local authority shall be deemed to have been placed in exercise of the powers conferred by this Act.

Provisions applicable to other Property.

Disputes as to compensation under section 3.

9. If any dispute arises concerning the sufficiency of the amount of the compensation paid or tendered under section 3, clause (*d*), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him, and his determination thereof shall be final and conclusive.

Removal or alteration of telegraph line or post on property not belonging to a local authority.

10. *(1)* When, under the foregoing provisions of this Act, a telegraph line or post has been placed by a telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration and call upon the telegraph authority to remove or alter the line or post accordingly, and, if the telegraph authority refuses or omits to do so, may apply to the District Judge within whose jurisdiction the property is situate to order the removal or alteration.

(2) A District Judge receiving an application under this section may, in his discretion, reject the same or make an order absolutely or subject to conditions for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form, and the order so made shall be final and conclusive.

Amendments of the Indian Telegraph Act, 1876.

Amendment of the definition of "telegraph" in Act I of 1876.

11. To the definition of "telegraph" in section 3 of the Indian Telegraph Act, 1876, the following shall be added, namely:— I of 1876.

"and includes any apparatus for transmitting or making telegraphic, telephonic or other communications by means of electricity."

Amendment of section 8, clause (*a*), of same Act.

12. To clause *(a)* of section 8 of the same Act the following shall be added, namely:—

"or of any telegraph established by Government and leased to any person."

Addition to section 8 of same Act.

13. To the same section the following words shall be added, namely:—

"When prescribing rules under clause (*a*) of this section, the Governor General in Council may by the rules impose fines for any breach of the same:

"Provided that the fines so imposed shall not exceed the following limits, namely:—

"*(1)* when the licensee or lessee is punishable for the breach, one thousand rupees, and in the case of a continuing breach a further fine of two hundred rupees for every day after the first during the whole or any part of which the breach continues;

"*(2)* when a servant of the licensee or lessee or any other person is punishable for the breach, one-fourth of those amounts."

STATEMENT OF OBJECTS AND REASONS.

THE main object of this Bill is to give power to the Government, and to any company or person licensed under section 4 of the Indian Telegraph Act, 1876, and specially empowered in this behalf, to place telegraph lines under or over property belonging whether to private persons or to public bodies.

2. The attention of the Government has recently been directed to the fact that, as the law now stands, the Governor General in Council and his licensees have no power to place telegraph lines upon the land of municipal or other similar bodies or of private persons. In England the requisite powers are conferred on the Postmaster General, who works and maintains the telegraphs in that country, by 26 & 27 Vic., cap. 112, as amended by 41 & 42 Vic., cap. 76; and as it seems desirable that the Government in which the exclusive privilege of establishing telegraphs in this country is vested should possess somewhat similar powers, the present Bill has been prepared.

3. Section 3 empowers the Government or any company or person licensed under section 4 of the Indian Telegraph Act, 1876, and specially authorized by a Government officer to place and maintain telegraph lines and posts under, over, along, across, in or upon the property of any "person", which term includes a body corporate. It is considered that licensees should have these powers, because the licenses granted always strictly limit the area of the operations of the licensees, and it would be somewhat anomalous for local bodies and private persons to have the power to neutralize the licenses granted by the Governor General in Council by objecting to the licensees' operations, or by hampering them by the exaction of fees for permission to work under their licenses. The powers thus given are, however, to be exercised so as to do as little damage as possible, and their exercise is moreover made subject to important restrictions and conditions.

4. When the property belongs to a municipal board or other local authority, the powers conferred by the Act cannot be exercised over it without the consent of that authority; and that consent may be given subject to conditions. Among other conditions which can be imposed is one requiring that any expenses to which the local authority may be put by the exercise of the power shall be made good; but it will be observed that no provision is made for the payment of compensation on any other account to a local authority whose property is made use of for this purpose, it being considered that, as the construction of telegraphs is a matter in which the public are interested, no charge should be made for accommodation of this sort when it can be granted without inconvenience to the public or expense to the local authority concerned.

5. It may sometimes happen that, though at the time when a telegraph authority desires to exercise its powers over some property of a local authority there may be no reasonable ground for objecting, and the local authority may thus find itself compelled to consent, a state of things may subsequently arise under which the continued exercise of the powers would be felt as a grave public inconvenience or a cause of serious loss. Land, *e.g.*, which was waste at the time the telegraph line was constructed over it might afterwards be required for some important public object or might acquire great value for building purposes, and, as no compensation (except for actual expenses out of pocket) would have been paid to the local authority at the time the line was constructed, it is but just that provision should be made for the removal or alteration of the line in such an event. This accordingly is done by section 5 of the Bill, which empowers the local authority to call upon the telegraph authority to remove or alter its telegraph or post, and, in the event of the telegraph authority refusing or neglecting to do so, gives an appeal to the Local Government.

6. In the event, which it is believed will be rare, of a local authority arbitrarily refusing its consent to the exercise by a telegraph authority of the powers conferred by the Bill or clogging its consent with unreasonable conditions, it will (section 7) be open to the telegraph authority to appeal to the Local Government, whose decision will be final.

7. Turning now to the case in which it may be desired to exercise the powers given by the Bill over the property of private persons, it will be seen that here provision is made for the payment of full compensation, the amount of which in the event of dispute will (section 9) be determined by the Civil Court, and that, in the event of a person upon whose property a telegraph line or post has been placed desiring subsequently to deal with the property in such a way as would make it necessary or convenient that the line or post should be removed to another part of it or to a higher or lower level or altered in form, he can (section 10) tender the cost of the work and call upon the telegraph authority to remove or alter the line or post, and, if that authority refuses to do so, can appeal to the Civil Court.

8. It may be observed, however, that in practice in this country the power of taking telegraph lines through private property is not likely to be exercised either by the Government, or by its licensees except on rare occasions, and then as a rule only to the extent of crossing with the wire, a post being scarcely ever erected on private land. Private property has hitherto been always avoided as much as possible, and it is likely to be still more carefully avoided in future if it is made clear, as it is proposed to do by this Bill, that full compensation will have to be paid for exercising the power over private and not for exercising it over public property.

9. The present opportunity has been taken to make three amendments of the Indian Telegraph Act, 1876, which experience has shown to be desirable. The first has for its object the emendation of the definition of "telegraph" so as to bring it into more exact conformity with the construction put upon the definitions in the English Acts by a recent decision of the High Court of Justice in England.

10. The second is intended to provide for the regulation of telegraph lines constructed by the Government but leased to companies or individuals by whom they are worked. The position of such lines under the Act as it at present stands is far from clear, and the object of the amendment proposed in section 12 of the Bill is to put them on much the same footing as licensed lines.

11. The object of the third amendment, which is made by section 13 of the Bill, is to prescribe penalties for the breach of the rules made under section 8 of the Act for the conduct of telegraphs worked under license or lease. In such cases, as the Act now stands, the only remedy is to revoke the license or lease, but this course would in most cases cause such great public inconvenience that it is impracticable. The result is that at present there is virtually no penalty for the infringement of the rules made under section 8 of the Act. To remedy this state of things, the Bill adds a clause to that section empowering the Governor General in Council to prescribe by the rules moderate fines for the breach of them.

The 12th August, 1884.

T. C. HOPE.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Report of the Select Committee on the Bill to make better provision for the organization and administration of Municipalities in the Panjáb was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 6th August, 1884:—

WE, the undersigned Members of the Select Committee to which the Bill to make better provision for the organization and administration of Municipalities in the Panjáb was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

From Officiating Secretary to Government, Panjáb, No. 211, dated 10th April, 1884, and enclosures [Papers No. 1].
From E. vs. Cullin, Esq., dated 27th April, 1884, and enclosure [Papers No. 2].
From Officiating Secretary to Government, Panjáb, No. 68S., dated 16th May, 1884, and enclosures [Papers No. 3].
From Officiating Secretary to Government, Panjáb, No. 74S., dated 16th May, 1884, and enclosure [Papers No. 4].
From Officiating Secretary to Government, Panjáb, No. 79S., dated 21st May, 1884, and enclosure [Papers No. 5].
From Officiating Secretary to Government, Panjáb, No. 88S., dated 27th May, 1884, and enclosures [Papers No. 6].
From Officiating Secretary to Government, Panjáb, No. 94S., dated 29th May, 1884, and enclosures [Papers No. 7].
From Officiating Secretary to Government, Panjáb, No. 121S., dated 9th June, 1884, and enclosures [Papers No. 8].
Extract from the *Tribune* of 14th June, 1884 [Papers No. 9].

2. Instead of repealing the Panjáb Municipal Act, 1873, and bringing the new law into force at once, as was proposed in the Bill as introduced, we have thought it better (section 4 of the amended Bill) to require the Local Government to apply the new law to any place to which that Act had been extended, unless the Local Government comes to the conclusion, and declares by notification in the official Gazette, that the provisions of the Act are not suited to any such place. The Local Government is at the same time empowered to continue in office the members of the present committees as if they had been elected or appointed under the new law for any term not exceeding three years which it may fix. When the new law is thus made applicable to any place to which the Act of 1873 had been extended, that Act will cease to apply, and other consequences will follow, which are set forth in section 12. In the Supplemental chapter, the Local Government is further empowered to withdraw the area of any municipality from the operation either of Act IV of 1873 or of the new law, if the latter has been made applicable. The Local Government will thus be enabled to abolish any municipality constituted under Act IV of 1873, if it appears undesirable to continue municipal institutions in the area under its control.

3. The provisions as to the term of office of members, the removal of members and the filling up of casual vacancies in the committee have been assimilated, as nearly as possible, to the corresponding provisions in the District Boards Act.

4. On the recommendation of the Local Government, we have by section 14 empowered the Commissioner of a division to approve of the election of a president by a second class committee, and to appoint the president of a committee of this class where the committee is not empowered to elect, or fails or does not desire to exercise the power.

5. The provision in section 25 enabling the president or, in his absence, a vice-president to exercise the powers of the committee in cases of emergency has been limited to the power, at the cost of the municipality, to direct the execution of any work or the doing of any act which he considers necessary for the service or safety of the public; and, when he exercises this power, he is required to report his proceedings to the next following meeting of the committee. Where the case is sufficiently provided for by the rules of business under section 24, as to the exercise of the executive authority of the committee, the extraordinary powers given by section 25 of course will not arise, as there would not then be a case of emergency.

6. In section 27 we have provided that nothing done under the Act should be questioned on account of the existence of a vacancy in a committee or joint committee or of any merely formal defect.

7. We have not retained the provision of the Bill as introduced requiring the sanction of the Commissioner of the division to the removal of a paid secretary, and his sanction to the appointment is confined (section 28) to the appointment of a paid secretary and to

the rate of pay to be allowed, and does not extend to approval of the person selected. The responsibility for appointing a proper person will thus rest exclusively with the committee. In cases, however, in which Government officers were employed in the service of a municipality before the passing of this Bill into law, section 12 provides for their remaining in the service of the new committee, and prohibits their dismissal unless under the sanction of the Local Government.

8. The employment of other officers and servants (when there is available budget provision) is made subject only (section 29) to what is necessary and proper for the efficient execution of the duties of the committee, and to any rules which the Local Government may make as to the employment of persons appointed to offices requiring professional skill; but power is given to the Commissioner of the division, subject to an appeal by the committee to the Local Government (section 30), to require the reduction of excessively large or expensive establishments or of unduly high rates of pay.

9. We have raised the limit of the power of first class committees (section 33) to delegate the authority to enter into contracts on their behalf to 500 rupees, and have required all contracts for larger amounts on behalf of any committee to be sanctioned at a meeting of the committee before they can be entered into. It has been suggested that separate provision is required for contracts which do not fix the quantity of work to be done, but only the rate to be paid per unit of work; but we are of opinion that these contracts can be brought within this section by fixing a maximum limit, not exceeding five hundred rupees, on the sum which may become payable under them.

10. In section 34 the limit of value above which contracts are required to be in writing has been increased from Rs. 20 to Rs. 100 in the case of first class committees, and Rs. 50 in the case of second class committees.

11. The prohibition in section 35 of members, officers or servants of the committee being interested in contracts with the committee, unless with the Commissioner's permission, has been assimilated to section 62 of the District Boards Act.

12. Section 36, which takes the place of section 99 of the Bill as introduced, has been modified so as to require notice to be given of all suits against committees, or against their officers for their official acts; the sub-sections as to limitation and as to tender of amends being omitted as unnecessary. The protection thus given corresponds with that given to Government and to public officers by section 424 of the Civil Procedure Code, except that the notice required is shorter.

13. In the Taxation chapter the taxes which committees are empowered to propose for the general purposes of the Act are brought together in section 39, a higher rate of tax on buildings and lands being allowed in certain scheduled municipalities, all of which are hill-stations, than that which is fixed as the maximum elsewhere.

14. In the second sub-section of section 39 we have defined the expression "annual value" as meaning the gross annual rent for which buildings or lands might reasonably be expected to let, and we have omitted the first proviso, as, though it has been the practice in hill-stations to let houses furnished, the furniture supplied is ordinarily of small value; and as most of us are of opinion that the rent to be considered in estimating the annual value is the sum for which they would let if unfurnished, we have added words making this clear.

15. Special powers are also given to impose a scavenging-tax and a water-tax as payment for services rendered to the occupiers of any buildings or land or for the construction and maintenance of works for the supply of water from which such occupiers may benefit. No special power has been thought necessary to enable committees to charge fees for the use of schools or other public institutions maintained by them, as they may impose any conditions they may think proper upon persons who wish to avail themselves of the benefit of such institutions.

16. We have modified the procedure for imposing and assessing taxes (section 42) by providing that new taxes leviable by the year should not come into force except at the commencement of the year, and other new taxes until at least six months have elapsed from the date of the meeting at which, after the requisite sanction has been obtained, their imposition is directed.

17. We have enabled the Local Government (section 45), where any tax appears unfair in its incidence or injurious to the interests of the public, to require the committee to take the necessary measures to remove the objection and, if it fails to comply with the requisition, to suspend the levy of the tax.

18. We have (section 49) given an appeal against assessments, on account of octroi, as in the case of other taxes, and we have also enabled officers hearing appeals against assessments, if they entertain reasonable doubt on any question as to the liability to, or principle of, the assessment, to state a case for the decision of the Chief Court.

19. We have (section 52) saved taxes leviable under the Municipal Act now in force so far as they are consistent with, and within the powers conferred by, the new law.

20. We have in section 59 conferred upon the committee a power to remit a tax on buildings on certain equitable grounds.

21. We have made taxes on buildings and lands, other than the scavenging-tax and the water-tax, payable by the owner and also a charge upon the property, and have therefore found it unnecessary to make them recoverable from the occupier if not paid by the owner after notice.

22. We have added a section (62) giving power to inspect the contents of a conveyance or package to ascertain whether octroi is payable by having it brought before a Magistrate for the purpose, if the person bringing or receiving it within the municipality refuses to allow the necessary inspection, and have in other respects amended the provisions of the Bill as introduced on the subject of the recovery of octroi.

23. The provisions of the Bill on the subject of the municipal fund and of municipal property have been brought together in a new chapter (Chapter IV). In this chapter we have provided (section 68) for prior charges on the municipal fund for loans, establishment-charges and payments for maintenance of pauper-lunatics, audit of accounts, and services rendered to the committee by Provincial Departments of Government, and have empowered the Local Government to make rules with respect to the relative priority to be given to the other duties of the committee. We have also (section 71) declared certain descriptions of property held for municipal purposes to vest in the committee, and have (section 72) introduced a clause, based on a somewhat similar provision of the Bombay Municipal Act, providing that the administration of every public institution maintained out of municipal funds shall vest in the committee, but that the extent of the independent authority of the committee may be prescribed by the Local Government.

24. The sections relating to municipal police have also been collected in a separate chapter (Chapter V). We have added a section (78) defining the powers and duties of the police in respect of offences against the Act or rules made thereunder. By this section they are empowered to arrest persons committing such offences when necessary, and are required to give immediate information of the commission of such offences to the committee, and to assist members or officers of the committee in the exercise of their lawful authority.

25. Another new chapter (Chapter VI) sets forth the powers of the committee to do, or to require others to do, or to abstain from doing, particular acts. This and the following chapter, which deals with offences affecting the public health, safety or convenience, take the place of the powers to make rules for the prevention of nuisances, and for entry on private property for the detection and abatement of nuisances, given by section 67 of the Bill as introduced, and of the powers to issue injunctions and make conditional orders as to nuisances given by sections 68 to 70, and this chapter also embodies the additional powers to make rules and other powers expressly given by the Bill as introduced.

26. In framing these sections, the existing bye-laws of the principal municipalities, and the detailed Municipal Acts in force in other provinces of British India, have been referred to, and we have endeavoured to give all the powers not elsewhere given in the Bill which it appears to be necessary or proper that Panjáb municipalities should possess. While there may be municipalities in which some of these powers are not required, these municipalities can be excepted by the Local Government under one of the provisions contained in the Supplemental chapter from the sections giving the powers which the circumstances of the municipality render unnecessary.

27. Instead of enabling committees to make rules regulating for sanitary reasons the crops which may be grown within municipal limits, we have, by section 116, empowered the Local Government to prohibit by notification the cultivation of any crop, the use of any manure or the irrigation of land in any manner, which is reported by the Sanitary Commissioner to be injurious to health, or to impose such conditions thereupon as may remove the risk of injury, and have provided for compensation where the practice prohibited was of long standing.

28. In section 117, which relates to the regulation of offensive or dangerous trades, and corresponds with section 74 of the Bill as introduced, we have omitted manufactories of gunpowder or fireworks, which can now be regulated by rules made by the Local Government under the Explosives Act, IV of 1884, and shops for smoking opium, as these must be licensed under the Opium Act, and the Local Government may, if it thinks proper, instruct Deputy Commissioners to consult municipalities before granting a license under that Act.

29. In section 119 we have extended the power given by the Bill as introduced to make rules for the inspection and proper regulation of lodging-houses to houses occupied by members of more than one family, and have stated in greater detail the subjects with which such rules may deal. This power, with that given in section 115, to prohibit the use for human habitation of houses unfit to be so used, will enable committees to exercise more effective control than hitherto over the arrangements for the accommodation of human beings where this appears necessary for the preservation of the public health, and will, it is believed, be of special importance, not only in hill-stations, but in places the population of which is liable to be largely increased at particular seasons by the resort of pilgrims or the holding of large fairs.

30. Chapter VII provides for the punishment of certain offences affecting the public health, safety and convenience and of disobedience to orders given by the committee under the powers conferred by the preceding chapter.

31. In Chapter VIII, which deals with control, the changes made have been in the direction of assimilation with the provisions of the Panjáb District Boards Act. We have also revised the list of subjects on which the Local Government is empowered to make rules.

32. In the Supplemental chapter (Chapter IX) we have added provisions that copies of rules should be kept by committees available for inspection and for sale to the public (section 160); that rules or bye-laws made under the Panjáb Municipal Act, 1873, should, so far as consistent with, and within the powers conferred by, this Bill, continue in force until repealed by new rules, which the proper authority is required to make and take the necessary steps for bringing into force so soon as may be (section 161); and we have included provisions for altering the boundaries of municipalities or the class to which they belong (sections 165 to 169), for excepting them from the operation of such parts of the Bill as are not suited to their circumstances (section 170), and for withdrawing them from the operation of the law relating to municipalities (section 171).

33. A special section applicable only to Simla (section 177) has also been added to save the land-tax which has been substituted for the ground-rent formerly charged by Government, and which is levied concurrently with a tax on the annual value of property.

34. The publication ordered by the Council has been made as follows:—

In English.

Gazette.	*Date.*
Gazette of India	2nd, 9th and 16th June, 1883.
Panjáb Government Gazette	7th, 14th and 21st June, 1883.

In the Vernaculars.

Province.	*Language.*	*Date.*
Panjáb	... Urdu	... 2nd, 9th and 16th July, 1883.

35. We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

D. G. BARKLEY.
J. GIBBS.
C. P. ILBERT.
T. C. HOPE.

I HAVE not signed this Report, as, though originally appointed a Member of the Select Committee, I was unable to be present at any of the meetings.

J. W. QUINTON.

The 5th August, 1884.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 27th August, 1884, and was referred to a Select Committee:—

No. 12 OF 1884.

A Bill to provide more effectually for the suppression of certain forms of Gaming in British Burma.

WHEREAS it is expedient to provide more effectually for the suppression of certain forms of gaming in British Burma; It is hereby enacted as follows:—

Short title, extent and commencement.

1. *(1)* This Act may be called the Burma Gaming Act, 1884.

(2) It extends to all the territories for the time being under the administration of the Chief Commissioner of British Burma; and

(3) It shall come into force at once.

Game of *ti* and like games to be deemed lotteries.

2. The game known as "*ti*," and every other game or pretended game of a like nature, shall be deemed a lottery within the meaning of section 294A of the Indian Penal Code. XLV of 1860.

Application of Act III of 1867 to game of *ti* and like games.

3. *(1)* Taking part in the game of "*ti*," or in any other game or pretended game of a like nature, shall also be deemed gaming within the meaning of Act III of 1867.

(2) Every house, walled enclosure, room or other place, whether public or private, where any such game or pretended game is carried on, shall, for the purposes of that Act, be deemed a common gaming-house, and all expressions referring to the use of any such place as a common gaming-house shall include the use thereof for any such game or pretended game on a single occasion.

(3) All boxes, receptacles, lists, papers, tickets and forms used for the purpose of any such game or pretended game shall be deemed instruments of gaming within the meaning of the said Act.

Penalty on conducting game of *ti* and like games.

4. Whoever conducts or assists in conducting the game of "*ti*," or any other game or pretended game of a like nature, as manager, stakeholder or *daing*, or who is according to the rules of the game or pretended game entitled to receive the surplus proceeds, or any part of the surplus proceeds, of the stakes, after deducting the amount payable to the successful player or players, shall be punished with imprisonment for a term which may for a first offence extend to six months, and for a subsequent offence to two years, or with fine, or with both.

Power to extend local application of Act III of 1867 within British Burma.

5. *(1)* The Chief Commissioner may, from time to time, by notification published in the official Gazette, extend to the whole or any part of the territories for the time being under his administration any such of the provisions of Act III of 1867 as do not for the time being extend thereto. [See Act III of 1867, ss. 1 and 2.]

(2) From the date of any such extension so much of any rule having the force of law in operation in the territories to which the extension is made as is inconsistent with or repugnant to any provision so extended shall cease to have effect in those territories.

Power to demand security.

6. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or, when he is specially empowered in this behalf by the Local Government, a Magistrate of the first class receives information that any person within the local limits of his jurisdiction earns his livelihood, wholly or in part, by carrying on, or assisting in carrying on, the game of *ti*, or any other game or pretended game of a like nature, he may deal with such person as nearly as may be as if the information received about him were of the description mentioned in section 110 of the Code of Criminal Procedure; and for the purposes of any proceeding under this section the fact that a person earns his livelihood as aforesaid may be proved by evidence of general repute or otherwise. [See C. C. P., s. 110.] X of 1882. [Act X of 1882, s. 117.]

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide more effectually for the suppression of certain forms of gaming in British Burma.

2. It has long been the opinion of the most experienced District and Police Officers that the systematic gambling originally introduced by the low class Chinese who infest the towns and villages, and now carried on by them and by Burmans of a similar stamp, is doing great injury to the people of that province. In 1882, on the representation of the Inspector-General of Police of the prevalence of *tis* and of the inadequacy of the law to repress them effectually, the matter was taken up by the Chief Commissioner, who by a Resolution directed Commissioners to obtain an expression of public opinion on the question. With the Resolution were circulated various papers bearing on the subject, including a Bill for the suppression of unlawful gaming which was before the legislature of the Straits Settlements. Special inquiry was made as to whether the people of Burma desired, and were prepared to accept, a stringent gaming law similar to that Bill.

3. The answers showed clearly that the Burmans as a body regarded the prevalence of gambling, especially as practised in the *ti*,* as a very great evil. Government officers were almost equally strong in their denunciations of these *tis*. With a few exceptions the opinions received were in favour of suppressing this and other forms of public gaming, and the Bill proposed for the Straits Settlements was accepted as a guide to the direction which legislation should take.

4. The history of the means which the Courts have hitherto used to check the opening of *tis* is briefly as follows. For some years after the passing of Act III of 1867 it was held that a *ti* was a form of gaming, and that the lists and papers used in the *ti* were instruments of gaming, within the meaning of that Act. This view was confirmed by the High Court of Calcutta in 1869. In 1876 Mr. Wilkinson and Mr. Quinton, as Judges of the Special Court of British Burma, held that *tis* were lotteries, and that, since the enactment of section 294A of the Indian Penal Code, lotteries were punishable under that section and not under Act III of 1867. It is not clear what effect the learned Judges of the Special Court gave to section 15 of Act XXVII of 1870, the Act by which section 294A of the Indian Penal Code was enacted. However, since the date of this judgment, the prosecution of the promoters of *tis* under Act III of 1867 may be said to have ceased; *tis* have been regarded as lotteries and the persons concerned in them have been prosecuted under section 294A of the Indian Penal Code; and until lately no doubt of the applicability of that section to this particular kind of gambling has arisen.

5. Two recent rulings of the Judicial Commissioner have presented a different view of the law. In the first of the cases in question the accused had been convicted by the Magistrate, under section 13 of Act III of 1867, as having been engaged in a *ti* in a *zayat* or public rest-house beside a public road. The Judicial Commissioner called for the proceedings, and, having come to the conclusion that a *ti* was not a game of chance and was mere betting or wagering, he referred the matter to the Special Court. The Officiating Recorder, Mr. Allen, dissented from the Judicial Commissioner's opinion, and held that the conviction was right. Under the constitution of the Special Court the opinion of the referring Judge prevails. The Judicial Commissioner accordingly issued a circular in which his own view of the law is enjoined on the Courts subordinate to him,—in other words, on all Courts outside the jurisdiction of the Recorder of Rangoon,—and in which he lays down the doctrine that a *ti* is not a game nor a lottery, and that the papers used in collecting the money of the persons who take part in the *ti* are wrongly described as lottery-tickets. In the second of these cases the accused had been convicted by the Magistrate at Rangoon under section 294A of the Penal Code of keeping a lottery-office. On appeal to the Officiating Recorder, that officer referred the question of whether a *ti* is a lottery to the Special Court. The Judicial Commissioner held that it was not; the Officiating Recorder that it was. In this case also the opinion of the referring Judge prevailed. The Judicial Commissioner, however, has informed the Courts subordinate to him that his own view of the law is to be their guide. There are thus two contradictory judgments of the Special Court, and two diverse rules of law established for different parts of the province, each Judge holding to his own individual opinion.

6. The object of the present Bill is to obviate the effect of the judgments and circulars of the Judicial Commissioner above referred to, which bar all prosecutions for *ti*-gaming, and the effect of which has already been to give a fresh impetus to that kind of gambling.

It has not been thought expedient to copy the measure proposed by the Government of the Straits Settlements. The draft Ordinance is a very complicated piece of legislation, very stringent in its provisions, and very likely, unless worked under closer supervision than can be given to it in Burma, to become an engine of oppression. Moreover, it does not seem either necessary or desirable to endeavour to check gambling of every kind. A people like the Burmese must have amusement of some sort. It is quite possible to make gambling an expensive amusement, but to stop it altogether, if the people wish to indulge in it, is beyond the power of the law, and the attempt to do it would probably only result in systematic bribery and the corruption of the police. What appears to be chiefly needed is the repression of the professional *ti*-gambler, the man who makes his living by going about inducing people to game and as often as not swindling them out of their money. The urgent requisite is a law which will enable the authorities to deal with professional gamblers, and all who aid and abet them, with prompt severity, wherever they may be found. For other purposes the Act of 1867 appears to be sufficient, nor does the extension of all its provisions to the province generally appear even to be necessary.

7. The present Bill has, therefore, been framed so as to deal particularly with *ti*-gaming, for which fresh legislation is urgently required.

Section 2 removes the doubt which has been felt as to the construction of section 294A of the Penal Code, by declaring the game of "*ti*" and other like games to be "lotteries" within the meaning of that section.

Section 3 similarly removes the doubt which has been felt as to the construction of Act III of 1867, by declaring that taking part in the game of "*ti*" and other like games shall be deemed to be "gaming" within the meaning of that Act. It also contains other provisions the chief effect of which will be to make it an offence to take part in such games in a private as well as in a public place.

The penalties imposed by section 4 on those who, as managers, *daings*, &c., conduct or assist in conducting such games have been advisedly made severe. Experience has shown that nothing but great severity of punishment will suffice to check this profitable form of gambling.

Section 6 of the Bill gives power to the Courts to demand security from persons who notoriously earn their living, or part of their living, by gaming of this description. The necessity for this provision arises to some extent from the fact that gambling of the kind which it is the object of the proposed enactment to suppress has been held to be an ostensible means of subsistence within the meaning of the Code of Criminal Procedure.

If this Bill becomes law, the powers in the hands of the authorities for the suppression of gambling will, it is believed, be sufficient and will at the same time be such as to secure, it may be confidently hoped, the desired results without risk of oppression.

The 20th August, 1884.

C. P. ILBERT.

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

* The nature of the game or lottery or series of bets called *ti* is as follows:—The banker, or professional gambler, who makes his living by the game, chooses one of 36 animals and deposits a piece of paper on which its name is written in a hollow bamboo or box. Then his emissaries go round asking people to name the animal so chosen and to back their guess by putting down their money. Any one who guesses rightly gets thirty times his stake; the others lose.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, SEPTEMBER 13, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 27th August, 1884, and was referred to a Select Committee:—

No. 12 OF 1884.

A Bill to provide more effectually for the suppression of certain forms of Gaming in British Burma.

WHEREAS it is expedient to provide more effectually for the suppression of certain forms of gaming in British Burma; It is hereby enacted as follows:—

Short title, extent and commencement.

1. *(1)* This Act may be called the Burma Gaming Act, 1884.

(2) It extends to all the territories for the time being under the administration of the Chief Commissioner of British Burma; and

(3) It shall come into force at once.

Game of *ti* and like games to be deemed lotteries.

2. The game known as "*ti*," and every other game or pretended game of a like nature, shall be deemed a lottery within the meaning of section 294A of the Indian Penal Code.

XLV of 1860.

Application of Act III of 1867 to game of *ti* and like games.

3. *(1)* Taking part in the game of "*ti*," or in any other game or pretended game of a like nature, shall also be deemed gaming within the meaning of Act III of 1867.

(2) Every house, walled enclosure, room or other place, whether public or private, where any such game or pretended game is carried on, shall, for the purposes of that Act, be deemed a common gaming-house, and all expressions referring to the use of any such place as a common gaming-house shall include the use thereof for such game or pretended game on a single

(3) All boxes, receptacles, lists, papers, tickets and forms used for the purpose of any such game or pretended game shall be deemed instruments of gaming within the meaning of the said Act.

Penalty on conducting game of *ti* and like games.

4. Whoever conducts or assists in conducting the game of "*ti*," or any other game or pretended game of a like nature, as manager, stakeholder or *daing*, or who is according to the rules of the game or pretended game entitled to receive the surplus proceeds, or any part of the surplus proceeds, of the stakes, after deducting the amount payable to the successful player or players, shall be punished with imprisonment for a term which may for a first offence extend to six months, and for a subsequent offence to two years, or with fine, or with both.

Power to extend local application of Act III of 1867 within British Burma.

[See Act III of 1867, ss. 1 and 2.]

5. *(1)* The Chief Commissioner may, from time to time, by notification published in the official Gazette, extend to the whole or any part of the territories for the time being under his administration any such of the provisions of Act III of 1867 as do not for the time being extend thereto.

(2) From the date of any such extension so much of any rule having the force of law in operation in the territories to which the extension is made as is inconsistent with or repugnant to any provision so extended shall cease to have effect in those territories.

Power to demand security.

[See C. C. P., s. 110.]

6. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or, when he is specially empowered in this behalf by the Local Government, a Magistrate of the first class receives information that any person within the local limits of his jurisdiction earns his livelihood, wholly or in part, by carrying on, or assisting in carrying on, the game of *ti*, or any other game or pretended game of a like nature, he may deal with such person as nearly as may be as if the information received about him were of the description mentioned in section 110 of the Code of Criminal Procedure; and for the purposes of any proceeding under this section the fact that a person earns his livelihood as aforesaid may be proved by evidence of general repute or otherwise.

X of 1882. [Act X of 1882, s. 47.]

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide more effectually for the suppression of certain forms of gaming in British Burma.

2. It has long been the opinion of the most experienced District and Police Officers that the systematic gambling originally introduced by the low class Chinese who infest the towns and villages, and now carried on by them and by Burmans of a similar stamp, is doing great injury to the people of that province. In 1882, on the representation of the Inspector-General of Police of the prevalence of *tis* and of the inadequacy of the law to repress them effectually, the matter was taken up by the Chief Commissioner, who by a Resolution directed Commissioners to obtain an expression of public opinion on the question. With the Resolution were circulated various papers bearing on the subject, including a Bill for the suppression of unlawful gaming which was before the legislature of the Straits Settlements. Special inquiry was made as to whether the people of Burma desired, and were prepared to accept, a stringent gaming law similar to that Bill.

3. The answers showed clearly that the Burmans as a body regarded the prevalence of gambling, especially as practised in the *ti*,* as a very great evil. Government officers were almost equally strong in their denunciations of these *tis*. With a few exceptions the opinions received were in favour of suppressing this and other forms of public gaming, and the Bill proposed for the Straits Settlements was accepted as a guide to the direction which legislation should take.

4. The history of the means which the Courts have hitherto used to check the opening of *tis* is briefly as follows. For some years after the passing of Act III of 1867 it was held that a *ti* was a form of gaming, and that the lists and papers used in the *ti* were instruments of gaming, within the meaning of that Act. This view was confirmed by the High Court of Calcutta in 1869. In 1876 Mr. Wilkinson and Mr. Quinton, as Judges of the Special Court of British Burma, held that *tis* were lotteries, and that, since the enactment of section 294A of the Indian Penal Code, lotteries were punishable under that section and not under Act III of 1867. It is not clear what effect the learned Judges of the Special Court gave to section 15 of Act XXVII of 1870, the Act by which section 294A of the Indian Penal Code was enacted. However, since the date of this judgment, the prosecution of the promoters of *tis* under Act III of 1867 may be said to have ceased; *tis* have been regarded as lotteries and the persons concerned in them have been prosecuted under section 294A of the Indian Penal Code; and until lately no doubt of the applicability of that section to this particular kind of gambling has arisen.

5. Two recent rulings of the Judicial Commissioner have presented a different view of the law. In the first of the cases in question the accused had been convicted by the Magistrate, under section 13 of Act III of 1867, as having been engaged in a *ti* in a *zayat* or public rest-house beside a public road. The Judicial Commissioner called for the proceedings, and, having come to the conclusion that a *ti* was not a game of chance and was mere betting or wagering, he referred the matter to the Special Court. The Officiating Recorder, Mr. Allen, dissented from the Judicial Commissioner's opinion, and held that the conviction was right. Under the constitution of the Special Court the opinion of the referring Judge prevails. The Judicial Commissioner accordingly issued a circular in which his own view of the law is enjoined on the Courts subordinate to him,—in other words, on all Courts outside the jurisdiction of the Recorder of Rangoon,—and in which he lays down the doctrine that a *ti* is not a game nor a lottery, and that the papers used in collecting the money of the persons who take part in the *ti* are wrongly described as lottery-tickets. In the second of these cases the accused had been convicted by the Magistrate at Rangoon under section 294A of the Penal Code of keeping a lottery-office. On appeal to the Officiating Recorder, that officer referred the question of whether a *ti* is a lottery to the Special Court. The Judicial Commissioner held that it was not; the Officiating Recorder that it was. In this case also the opinion of the referring Judge prevailed. The Judicial Commissioner, however, has informed the Courts subordinate to him that his own view of the law is to be their guide. There are thus two contradictory judgments of the Special Court, and two diverse rules of law established for different parts of the province, each Judge holding to his own individual opinion.

6. The object of the present Bill is to obviate the effect of the judgments and circulars of the Judicial Commissioner above referred to, which bar all prosecutions for *ti*-gaming, and the effect of which has already been to give a fresh impetus to that kind of gambling.

It has not been thought expedient to copy the measure proposed by the Government of the Straits Settlements. The draft Ordinance is a very complicated piece of legislation, very stringent in its provisions, and very likely, unless worked under closer supervision than can be given to it in Burma, to become an engine of oppression. Moreover, it does not seem either necessary or desirable to endeavour to check gambling of every kind. A people like the Burmese must have amusement of some sort. It is quite possible to make gambling an expensive amusement, but to stop it altogether, if the people wish to indulge in it, is beyond the power of the law, and the attempt to do it would probably only result in systematic bribery and the corruption of the police. What appears to be chiefly needed is the repression of the professional *ti*-gambler, the man who makes his living by going about inducing people to game and as often as not swindling them out of their money. The urgent requisite is a law which will enable the authorities to deal with professional gamblers, and all who aid and abet them, with prompt severity, wherever they may be found. For other purposes the Act of 1867 appears to be sufficient, nor does the extension of all its provisions to the province generally appear even to be necessary.

* The nature of the game or lottery or series of bets called *ti* is as follows:—The banker, or professional gambler, who makes his living by the game, chooses one of 36 animals and deposits a piece of paper on which its name is written in a hollow bamboo or box. Then his emissaries go round asking people to name the animal so chosen and to back their guess by putting down their money. Any one who guesses rightly gets thirty times his stake; the others lose.

7. The present Bill has, therefore, been framed so as to deal particularly with *ti*-gaming, for which fresh legislation is urgently required.

Section 2 removes the doubt which has been felt as to the construction of section 294A of the Penal Code, by declaring the game of "*ti*" and other like games to be "lotteries" within the meaning of that section.

Section 3 similarly removes the doubt which has been felt as to the construction of Act III of 1867, by declaring that taking part in the game of "*ti*" and other like games shall be deemed to be "gaming" within the meaning of that Act. It also contains other provisions the chief effect of which will be to make it an offence to take part in such games in a private as well as in a public place.

The penalties imposed by section 4 on those who, as managers, *daings*, &c., conduct or assist in conducting such games have been advisedly made severe. Experience has shown that nothing but great severity of punishment will suffice to check this profitable form of gambling.

Section 6 of the Bill gives power to the Courts to demand security from persons who notoriously earn their living, or part of their living, by gaming of this description. The necessity for this provision arises to some extent from the fact that gambling of the kind which it is the object of the proposed enactment to suppress has been held to be an ostensible means of subsistence within the meaning of the Code of Criminal Procedure.

If this Bill becomes law, the powers in the hands of the authorities for the suppression of gambling will, it is believed, be sufficient and will at the same time be such as to secure, it may be confidently hoped, the desired results without risk of oppression.

The 20th August, 1884.

C. P. ILBERT.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 10th September, 1884, and was referred to a Select Committee:—

No. 13 OF 1884.

A Bill to amend the Burma Steam-boilers and Prime-movers Act, 1882.

WHEREAS it is expedient to amend the Burma Steam-boilers and Prime-movers Act, 1882; It is hereby enacted as follows:

XVIII of 1882.

1. This Act may be called the Burma Steam-boilers and Prime-movers Act, 1884; and it shall come into force at once.

Short title and commencement.

2. In section 4 of the Burma Steam-boilers and Prime-movers Act, 1882, after the words "first or second class" the words "or as engine-drivers" shall be added.

Amendment of section 4 of Act XVIII of 1882.

XVIII 1882.

3. In section 5, sub-section (2), section 8, clause (*b*), and section 11, clause (*b*), of the said Act, after the word "engineer" the words "or in the case of a boiler or prime-mover attached to an engine of not more than twenty horse-power of an engineer or engine-driver" shall be inserted.

Amendment of sections 5, 8 and 11 of same Act.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to amend the Burma Steam-boilers and Prime-movers Act, 1882, in such a manner as to provide for the grant of certificates to engine-drivers, authorizing them to take charge of boilers and prime-movers attached to engines of not more than twenty horse-power. Under the Act as it at present stands, certificates can be granted to engineers of the first and second classes only, and all boilers and prime-movers must be in charge of engineers of one or other of these classes. The Board of Examiners appointed under the Act have recently represented to the Chief Commissioner that these provisions cause unnecessary hardship to a class of Native drivers who can be trusted to manage, and actually do manage, small engines. It would be misleading to give these men engineers' certificates of any class, inasmuch as they are in no sense engineers. On the other hand, it is only fair to them and the small millowners who employ them that they should be eligible for some sort of certificate and be permitted to take charge of boilers and prime-movers attached to engines of low horse-power. Under these circumstances, the Board suggest that the Act should be amended in such a way as to authorize the grant to such persons, when found competent, of engine-drivers' certificates, which will empower them to take charge of boilers and prime-movers attached to engines of not more than twenty horse-power, and they point out that there is a precedent for the grant of such certificates in the Inland Steam-vessels Act, 1884, sections 28 and 29. In order to carry out these suggestions, which are supported by the Chief Commissioner, the present Bill, which makes the necessary amendments in the Burma Steam-boilers and Prime-movers Act, 1882, has been prepared.

The 28th August, 1884.

C. P. ILBERT.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, SEPTEMBER 20, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 10th September, 1884, and was referred to a Select Committee:—

No. 13 OF 1884.

A Bill to amend the Burma Steam-boilers and Prime-movers Act, 1882.

WHEREAS it is expedient to amend the Burma Steam-boilers and Prime-movers Act, 1882; It is hereby enacted as follows:

XVIII of 1882.

1. This Act may be called the Burma Steam-boilers and Prime-movers Act, 1884; and it shall come into force at once.

Short title and commencement.

2. In section 4 of the Burma Steam-boilers and Prime-movers Act, 1882, after the words "first or second class" the words "or as engine-drivers" shall be added.

Amendment of section 4 of Act XVIII of 1882.

XVIII of 1882.

3. In section 5, sub-section (2), section 8, clause (*b*), and section 11, clause (*b*), of the said Act, after the word "engineer" the words "or in the case of a boiler or prime-mover attached to an engine of not more than twenty horse-power of an engineer or engine-driver" shall be inserted.

Amendment of sections 5, 8 and 11 of same Act.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to amend the Burma Steam-boilers and Prime-movers Act, 1882, in such a manner as to provide for the grant of certificates to engine-drivers, authorizing them to take charge of boilers and prime-movers attached to engines of not more than twenty horse-power. Under the Act as it at present stands, certificates can be granted to engineers of the first and second classes only, and all boilers and prime-movers must be in charge of engineers of one or other of these classes. The Board of Examiners appointed under the Act have recently represented to the Chief Commissioner that these provisions cause unnecessary hardship to a class of Native drivers who can be trusted to manage, and actually do manage, small engines. It would be misleading to give these men engineers' certificates of any class, inasmuch as they are in no sense engineers. On the other hand, it is only fair to them and the small millowners who employ them that they should be eligible for some sort of certificate and be permitted to take charge of boilers and prime-movers attached to engines of low horse-power. Under these circumstances, the Board suggest that the Act should be amended in such a way as to authorize the grant to such persons, when found competent, of engine-drivers' certificates, which will empower them to take charge of boilers and prime-movers attached to engines of not more than twenty horse-power, and they point out that there is a precedent for the grant of such certificates in the Inland Steam-vessels Act, 1884, sections 28 and 29. In order to carry out these suggestions, which are supported by the Chief Commissioner, the present Bill, which makes the necessary amendments in the Burma Steam-boilers and Prime-movers Act, 1882, has been prepared.

The 28th August, 1884.

C. P. ILBERT.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, SEPTEMBER 27, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 10th September, 1884, and was referred to a Select Committee:—

No. 13 of 1884.

A Bill to amend the Burma Steam-boilers and Prime-movers Act, 1882.

WHEREAS it is expedient to amend the Burma Steam-boilers and Prime-movers Act, 1882; It is hereby enacted as follows:

XVIII of 1882.

1. This Act may be called the Burma Steam-boilers and Prime-movers Act, 1884; and it shall come into force at once.

Short title and commencement.

2. In section 4 of the Burma Steam-boilers and Prime-movers Act, 1882, after the words "first or second class" the words "or as engine-drivers" shall be added.

Amendment of section 4 of Act XVIII of 1882.

XVIII 1882.

3. In section 5, sub-section (2), section 8, clause (*b*), and section 11, clause (*b*), of the said Act, after the word "engineer" the words "or in the case of a boiler or prime-mover attached to an engine of not more than twenty horse-power of an engineer or engine-driver" shall be inserted.

Amendment of sections 5, 8 and 11 of same Act.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to amend the Burma Steam-boilers and Prime-movers Act, 1882, in such a manner as to provide for the grant of certificates to engine-drivers, authorizing them to take charge of boilers and prime-movers attached to engines of not more than twenty horse-power. Under the Act as it at present stands, certificates can be granted to engineers of the first and second classes only, and all boilers and prime-movers must be in charge of engineers of one or other of these classes. The Board of Examiners appointed under the Act have recently represented to the Chief Commissioner that these provisions cause unnecessary hardship to a class of Native drivers who can be trusted to manage, and actually do manage, small engines. It would be misleading to give these men engineers' certificates of any class, inasmuch as they are in no sense engineers. On the other hand, it is only fair to them and the small millowners who employ them that they should be eligible for some sort of certificate and be permitted to take charge of boilers and prime-movers attached to engines of low horse-power. Under these circumstances, the Board suggest that the Act should be amended in such a way as to authorize the grant to such persons, when found competent, of engine-drivers' certificates, which will empower them to take charge of boilers and prime-movers attached to engines of not more than twenty horse-power, and they point out that there is a precedent for the grant of such certificates in the Inland Steam-vessels Act, 1884, sections 28 and 29. In order to carry out these suggestions, which are supported by the Chief Commissioner, the present Bill, which makes the necessary amendments in the Burma Steam-boilers and Prime-movers Act, 1882, has been prepared.

The 28th August, 1884.

C. P. ILBERT.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 4, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd October, 1884:—

No. 14 OF 1884.

A Bill to repeal the Straits Settlements Emigration Act, 1877, and to amend the Indian Emigration Act, 1883.

WHEREAS it is expedient to repeal the Straits Settlements Emigration Act, 1877, and to amend the Indian Emigration Act, 1883, in manner hereinafter appearing; It is hereby enacted as follows:—

V of 1877.
XXI of 1883.

1. The Straits Settlements Emigration Act, 1877, is repealed. V of 1877.

2. For section 102 of the Indian Emigration Act, 1883, the following section shall be substituted:— XXI of 1883.

New section substituted for section 102 of Act XXI of 1883.

"102. On and from such a date as the Governor General in Council may, by notification in the *Gazette of India*, fix in this behalf, a Native of India who departs by sea out of British India under an agreement to labour for hire in any protected Native State adjoining the Straits Settlements to which the notification refers shall not be deemed to emigrate within the meaning of this Act."

Power for Governor General in Council to exempt emigration to Native States adjoining the Straits Settlements from Act.

STATEMENT OF OBJECTS AND REASONS.

THE main object of this Bill is to repeal Act V of 1877 (the Straits Settlements Emigration Act, 1877), which extends only to the Madras Presidency. It is dictated by the policy which recently led to the enactment of Act VII of 1883, (to repeal the British Burma Labour Law, 1876.) As in the case of Burma, it is found that there is a system of "free emigration" to the Straits which not only competes with, but altogether distances, the Government system for which Act V of 1877 provides. From the information before it, the Government of India is of opinion that that Act has impeded instead of promoting emigration, that labour flows as naturally to and from the Straits as it does between Burma and India, and that attempts to control its movement in British territory merely induce it to seek an outlet from the French ports of Pondicherry and Karikal. Such provisions as in the opinion of the Government are necessary for the protection and control of the Indian immigrant after his arrival in the Straits have been embodied in a revised Labour Regulation, which is now before the Straits legislature, and will, it is expected, shortly become law. Under these circumstances, the Government of India considers that emigration from India to the Straits should be uncontrolled by law in this country save as regards the requirements of the Native Passengers Ships Act.

2. The repeal of Act V of 1877 necessitates, however, an amendment of section 102 of Act XXI of 1883 (the Indian Emigration Act, 1883). The first sub-section of that section provides for the extension of Act V of 1877 to other parts of British India. As the Act is itself now being repealed, it is clear that this sub-section should be repealed also. The second and third sub-sections of that section give the Governor General in Council power by notification to include any of the protected Native States adjoining the Straits Settlements within

the scope of any law relating to emigration to those Settlements, and exempt, on and from the date of any such notification, emigration to the protected State specified therein from the operation of Act XXI of 1883. Though there will no longer be any special law relating to emigration to the Straits, it is deemed desirable to retain the power, which these sub-sections confer, of exempting emigration to the protected States from Act XXI of 1883. A new section has therefore been substituted by section 2 of the Bill for section 102 of Act XXI of 1883 empowering the Governor General in Council to exempt emigration to the protected States from that Act whenever he considers such exemption to be desirable.

The 25th September, 1884.

S. C. BAYLEY.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Report of the Select Committee on the Bill to provide more effectually for the suppression of certain forms of Gaming in British Burma was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 25th September, 1884:—

WE, the undersigned members of the Select Committee to which the Bill to provide more effectually for the suppression of certain forms of Gaming in British Burma was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

From Officiating Secretary to Chief Commissioner, British Burma, No. 289-1L., dated 9th September, 1884 [Paper No. 1].
Telegram from Chief Commissioner, British Burma, dated 15th September, 1884 [Paper No. 2].

2. The following is an extract from the Chief Commissioner's telegram of the 15th instant:—

"Opinions received on Burma Gaming Bill induce me to urge following points:—

"*First*, we must make touts for *ti* punishable; so please, after word 'players' in section 4, insert words 'or who promotes the game by soliciting or collecting stakes or otherwise.'

"*Second*, I fear Courts may unduly restrict meaning of word 'place'; therefore, for first eight words in clause (2), section 3, please substitute words 'every place, whether enclosed or unenclosed.'

Thirdly, our 1st class Magistrates are few; therefore please add clause as follows:—

'The Local Government may specially authorize any Magistrate of the 2nd class to exercise the powers conferred by section 5 of Act III of 1867 on the Magistrate of the district.'

Fourthly, we want power to arrest touts in public places; therefore please add clause as follows:—

'A police-officer may apprehend without warrant any person soliciting or collecting stakes for *ti* or any other game of like nature in any public street, place or thoroughfare.'

"*Fifthly*, on advice of officers consulted, I agree that section 2 of Bill may be omitted."

3. We have adopted all these suggestions except the second; and, though the Chief Commissioner adds that he lays much stress on that suggestion, we do not think it would be possible to adopt it, at least in the shape in which he proposes it. It must be remembered that the Bill is not an independent measure, but is to be read with Act III of 1867; and, if the provisions of that Act relating to common gaming-houses be referred to, it will, we think, be found that some at least of them are such that if every "place," without any distinction or limitation whatever, was to be made a "common gaming-house," they could not fairly or reasonably be applied. It may indeed be doubted whether, apart from all consideration of the harshness which the proposed amendment would involve, some of those provisions could be applied to every "place" indiscriminately without giving rise to something approaching an absurdity.

4. We have, we need hardly say, considered whether it might not be desirable to give some extension to the definition of "common gaming-house" short of that proposed by the Chief Commissioner; but we think, having regard to English decisions on the provisions of Statutes worded in a manner somewhat similar to Act III of 1867 and the

present Bill, that the definition is as wide as it is desirable to make it. We think we may reasonably count on its being held, with reference to those decisions, to include all places which are sufficiently analogous to a house, walled enclosure or room to admit of being reasonably and fairly treated as gambling-houses for the purposes of the Act.

5. It must be remembered that the question here involved has little or no importance in practice except in its bearing on the position of persons who are induced to take tickets in the *ti;* for the managers and their assistants will in all cases be subject to severe penalties under separate provisions, which are completely independent of the definition of common gaming-house; and, as regards mere ticket-holders, it appears to us that it is sufficient if they are punishable under the common gaming-house provisions of the Bill and the Act as they now stand, and under the 13th section of the Act for gambling in public. We have, however, amended the last-mentioned section so as to give it a somewhat wider range in British Burma than it has elsewhere.

6. The publication ordered by the Council has been made as follows:—

In English.

Gazette.	*Date.*
Gazette of India	30th August, and 6th and 13th September, 1884.
British Burma Gazette	13th September, 1884.

In the Vernaculars.

Province.	*Language.*	*Date.*
British Burma ...	Burmese ...	13th, 20th, and 27th September, 1884.

We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

C. P. ILBERT.
C. U. AITCHISON.
J. GIBBS.
J. W. QUINTON.

The 25th September, 1884.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Report of the Select Committee on the Bill to amend the Law relating to Local Self-government in British Burma was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 25th September, 1884:—

WE, the undersigned Members of the Select Committee to which the Bill to amend the law relating to Local Self-government in British Burma was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

From Officiating Secretary to Chief Commissioner, British Burma, No. 678-8R.M., dated 27th September, 1883, and enclosures [Papers No. 1].
From Officiating Junior Secretary to Chief Commissioner, British Burma, No. 88-8R.M., dated 4th October, 1883, and enclosures [Papers No. 2].
From Officiating Junior Secretary to Chief Commissioner, British Burma, No. 348-8R.M., dated 17th October, 1883, and enclosures [Papers No. 3].
From Officiating Junior Secretary to Chief Commissioner, British Burma, No. 537-8R.M., dated 27th December, 1883, and enclosure [Papers No. 4].
Office Memorandum from Home Department, No. 762, dated 9th May, 1884, and enclosures [Papers No. 5].
From Officiating Secretary to Chief Commissioner, British Burma, No. 481-1G.M., dated 17th June, 1884, and enclosure [Papers No. 6].

2. The Bill as now amended by us will be seen on a glance to differ considerably from the draft. The difference is due chiefly to three causes.

3. In the first place, there has been a change in the main plan and scope of the measure. As explained in the Statement of Objects and Reasons, the original Bill was framed with a view to the inclusion within municipalities of adjoining rural areas. This course was taken, on the advice of the Local Government, in order to meet the requirements of certain rural tracts, until such time as it might be found possible to establish a system of local boards for rural districts.

From the papers since submitted, however, it appears that, upon fuller consideration, the weight of opinion is against the attempt to include in one municipality urban and rural tracts; and the Chief Commissioner now recommends that the Bill be confined, as we believe all the Municipal Acts on our Statute-book are, to urban tracts, the matter of local self-government in rural tracts being left to be dealt with separately hereafter.

In this recommendation we concur. The difficulty of framing the provisions of the Bill so as to fit in with conditions so essentially different as those of the towns and the adjoining tracts of country has turned out to be greater than was anticipated, and the call for the establishment of a system of local self-government in the rural tracts of British Burma is not so pressing as to justify our running the risk of passing an unsatisfactory measure for the sake of at once meeting it. We have accordingly reduced the Bill to the form of a Municipal Bill pure and simple.

4. Another difference between the original Bill and the present Bill is due to our having, at the request of the Chief Commissioner, adopted the course taken by the Select Committee on the Panjáb Municipal Bill of substituting for wide general powers to make rules detailed provisions regarding nuisances and other matters affecting the public health, safety and convenience. It is in this way that most of the new sections contained in Chapters VI and VII of the amended Bill are to be accounted for.

5. Lastly, the greater light thrown upon the needs of municipal government and on the difficulties likely to present themselves in the application of a Municipal Act by the prolonged discussions which took place in the Select Committee on the Panjáb Bill has led to numerous amendments in, or additions to, the Bill of minor importance. As examples we may refer to—

Section 27 (*e*) (distribution of executive powers and duties);

Section 28 (extraordinary powers of president and vice-president in case of emergency);

Sections 44 and 88 (powers to impose a scavenging-tax and to undertake the scavenging of private premises);

Sections 51-57 (special rules applicable to taxation of immoveable property);

Sections 60 and 61 (constitution and application of the municipal fund);

Sections 65-67 (provisions relating to municipal property);

Section 138 (settlement of disputes);

Sections 151-153 (relating to notices); and

Section 158 (which confers a power to exempt a municipality from any provisions of the Act which appear unsuitable to it).

This last section, we may observe, is specially necessary in view of the numerous and somewhat elaborate provisions now contained in Chapters VI and VII, some of which would probably be unsuitable in small municipalities.

6. We have now to notice such of the more important alterations of the Bill as are not accounted for by the foregoing remarks, or as otherwise seem to call for explanation.

7. Section 12 of the original Bill, which required a member of the municipal body to vacate his seat when appointed to a salaried municipal office, and section 29, which provided for the payment of fees to members for attendance at meetings, have been omitted; the former because it is not thought advisable that any person while a member of a committee should be appointed to a salaried office under the committee, and the latter because a municipal area can now comprise only a town and its immediate suburbs, and the members of the committee, being residents of that area and not having to travel any distance to the meetings, may reasonably be expected to give their services gratuitously.

8. We have, following the course taken in the Panjáb Bill, limited the rates to be imposed for water, lighting and scavenging only by providing (in effect) that they shall not exceed what is requisite to defray the cost of the services for which they are levied; and we have, as in the Panjáb Bill, provided that the proceeds of these rates shall be carried to the one municipal fund, separate accounts only being kept, instead of constituting separate funds.

9. We have substituted for section 47 of the original Bill, which required a municipal committee to make grants-in-aid to schools in accordance with such rules as the Government might make, a section (62) specifically appropriating to educational purposes the income for schools and all sums acquired by the municipality for educational purposes, and further requiring the assignment for educational purposes from general municipal revenues of such sum annually, not being more than 5 per cent. of the gross annual income of the municipality, as the Local Government may fix.

This section has been suggested by the Chief Commissioner with the view of meeting practical difficulties which have occurred in British Burma, and is, in his opinion, indispensable for the purpose of carrying out the educational policy which has recently been established in that province, and under which the municipalities, whilst relieved of police-charges, have been required to provide for the maintenance of local schools. It will be observed that the section, while it compels the committee to devote a certain minimum of its funds to educational purposes, imposes no such restriction as might have been imposed under the original section as regards the particular objects on which the money shall be spent.

10. The Chief Commissioner has in an unofficial communication proposed certain modifications in and additions to the new provisions introduced from the Panjáb Bill in Chapters VI and VII. Most of these are of minor importance, and we have in general adopted them, omitting only such as appeared to us superfluous or unnecessarily stringent. In one instance we, however, have found it necessary to omit a section of considerable importance proposed by the Chief Commissioner, namely, a section similar to section 14 of Act XLVIII of 1860 giving a certain power of control over brothels and other disorderly houses; but that section we have omitted merely because we think the matter is one to be dealt with by the Magistrates and police rather than by a municipal committee.

11. The only other point which appears to call for notice in connection with this portion of the Bill is that we have substituted two sections (126 and 127) based on similar sections in the Public Health Act, 1875, for a section proposed by the Chief Commissioner, to guard against the spread of infectious diseases through the medium of public conveyances.

12. Sections 49 to 51 of the original Bill provided for the exercise by a municipal committee or its members of certain magisterial powers in nuisance cases. We have omitted these sections for the same reasons that have led to the omission of the corresponding sections of other Municipal Bills recently before the Council, namely, that a section like section 49 could have little practical effect, and that it is not desirable that the powers given by the other two sections should be conferred.

13. We have not thought it advisable to adopt a proposal made by the Chief Commissioner that the Local Government should be empowered to invest municipal officers with the powers of police-officers for the purposes of section 34 of the Police Act (V of 1861).

14. We have added a clause to section 133 providing that the powers of control over municipalities, conferred by that section on the Commissioner and Deputy Commissioner, shall, in the case of the municipalities of Rangoon, Moulmein, Akyab and Bassein, be exercised not by those officers but by the Local Government.

15. Lastly, we have to state that we have considered a proposal of the Chief Commissioner to the effect that the appropriation provisions of the Bill should be modified in such a manner as to admit of a municipal committee subscribing to a public band or contributing to fireworks or the like on great occasions. We have not adopted this proposal, because the objects in question appear to us to lie beyond the sphere of the purposes for which municipal taxation is raised in this country.

16. The publication ordered by the Council has been made as follows:—

In English.

Gazette.		*Date.*
Gazette of India	...	21st and 28th July, and 4th August, 1883.
British Burma Gazette	...	11th, 18th and 25th August, 1883.

In the Vernaculars.

Province.	*Language.*	*Date.*
British Burma	... Burmese	... 25th August, and 1st and 8th September, 1883.

We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

C. P. ILBERT.

J. GIBBS.

T. C. HOPE.

A. W. QUINTON.

D. G. BARKLEY.

The 25th September, 1884.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Report of the Select Committee on the Bill to amend the law relating to Courts in the Panjáb was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 25th September, 1884 :—

WE, the undersigned Members of the Select Committee to which the Bill to amend the law relating to Courts in the Panjáb was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

Extract from the *Tribune* of 5th July, 1884 [Paper No. 1].
Extract from the *Tribune* of 12th July, 1884 [Paper No. 2].
Extract from the *Hindoo Patriot* of 14th July, 1884 [Paper No. 3].
Extract from the *Tribune* of 19th July, 1884 [Paper No. 4].
Extract from the *Tribune* of 26th July, 1884 [Paper No. 5].
Extract from the *Tribune* of 2nd August, 1884 [Paper No. 6].
Extract from the *Tribune* of 9th August, 1884 [Paper No. 7].
Extract from the *Tribune* of 16th August, 1884 [Paper No. 8].
From Officiating Secretary to Government, Panjáb, No. 4078., dated 26th August, 1884, and enclosures [Papers No. 9].
Extract from the *Civil and Military Gazette* of 21st August, 1884 [Paper No. 10].
President, Indian Association, Lahore, dated 30th August, 1884, and enclosure [Papers No. 11].
Extract from the *Tribune* of 23rd August, 1884 [Paper No. 12].
Extract from the *Civil and Military Gazette* of 25th August, 1884 [Paper No. 13].
From Officiating Secretary to Government, Panjáb, No. 4478., dated 4th September, 1884, and enclosure [Papers No. 14].
From Officiating Secretary to Government, Panjáb, No. 4458., dated 6th September, 1884, and enclosure [Papers No. 15].
Endorsement by Officiating Under-Secretary to Government of India, Home Department, No. 1215, dated 15th September, 1884, and enclosures [Papers No. 16].

2. We have rearranged the provisions of the Bill in a manner which we trust will make them more readily intelligible; and in the following remarks we shall as far as possible take the sections in their new order.

CHAPTER II.

THE CHIEF COURT.

3. It will be observed that under the proviso to section 8, sub-section (1), a single Judge of the Chief Court is prohibited from revising or modifying any proceeding of a lower Court except an "order" within the meaning of the Code of Civil Procedure. The restriction thus imposed does not, we believe, differ to any important extent from that contained in the corresponding provision (section 21, proviso) of the original Bill, and it relieves us of the necessity of using the phrase "interlocutory order," to which some difficulty attached.

4. We have also modified the last sub-section of section 8 by placing in the hands of the Senior Judge the power of determining which Judges of the Chief Court shall sit alone and which shall constitute benches, instead of leaving the power to be delegated by the Court to such Judge as it might think fit.

5. We have in section 14 added to the matters in respect of which the Chief Court is empowered to make rules—

(1) the translation of papers filed in the Chief Court and copying or printing any such papers or translations, and the payment by parties of the expenses thereby incurred; and

(2) the procedure in cases where a person is entitled to inspect a record of any Court or obtain a copy of it, and the fees payable for searches and copies.

We believe that these matters have long been dealt with by the Chief Court at its discretion, and we think it well that the power to deal with them should be placed on a legal basis.

CHAPTER III.

THE SUBORDINATE CIVIL COURTS.

6. The enumeration of the subordinate Civil Courts in section 17* differs from that in section 4 of the original Bill, but the substantive changes involved are smaller than might at first sight be supposed.

* (*a*) The Divisional Court.
(*b*) The Court of the District Judge.
(*c*) The Court of the Subordinate Judge.
(*d*) The Court of the Munsif.

The Divisional Court corresponds, with certain modifications, which we shall presently have to notice, to the Divisional Court of the original Bill.

7. The District Judge corresponds to the Assistant Judge of the original Bill, but his position as controlling the administration of civil justice in the district in somewhat the same manner as the District Magistrate under the Criminal Procedure Code controls the administration of criminal justice is more clearly brought out; and (section 23) his Court is, subject to certain exceptions, made the District Court for the purposes of those Acts which confer special powers on a District Court.

8. The Subordinate Judge corresponds to the Subordinate Judge of the first class of the original Bill, but we have, instead of fixing a pecuniary limit to his jurisdiction as in section 36 of the original Bill, empowered the Local Government to do so (section 26). It will thus be in the power of the Local Government to limit the jurisdiction of a Subordinate Judge to any sum it thinks fit, or to confer upon him the unlimited jurisdiction exercised by a District Judge in original suits.

9. The Munsif of the amended Bill is intended to comprise the second, third and fourth classes of Subordinate Judges of the original Bill, and his powers in original suits have been dealt with in a manner similar to that just described; that is to say, it is left (section 26) to the Chief Court to invest each Munsif with such powers as it thinks fit, provided that the limit of value does not exceed Rs. 1,000, which was the limit for Subordinate Judges of the second class under section 36 of the original Bill.

10. It will be observed that section 19 introduces an important change as regards the constitution of the Divisional Court; but as that change will be more conveniently explained when we come to speak of the appellate jurisdictions, it only remains to notice here that we have in the proviso to section 21 put the restriction on the powers of one of several Judges of a Divisional Court sitting alone on the same footing as the similar restriction in the case of the Chief Court (*supra*, paragraph 3).

11. We have inserted a new section (29), similar to section 17 of the Bengal Courts Act, providing for the transfer to a Subordinate Judge or Munsif of business under Act XXVII of 1860, Act XL of 1858 and Act IX of 1861.

12. In the section (now 30) which empowers the Local Government to confer the powers of a Small Cause Court Judge on certain judicial officers, we have, as in other cases, omitted all minute specification of pecuniary limits, and simply provided that the Local Government may confer such powers as it thinks fit within the limit of Rs. 500.

13. In dealing with a Bill of this description it is impossible to overlook the difficulties which present themselves in connection with the valuation of certain classes of suits for the purpose of determining the original jurisdiction and the course of appeal. The question of the simplest mode of valuing suits for the recovery of land is at present under the consideration of the Government of India, and we have not accordingly felt ourselves called upon to take it up; but there are certain other classes of suits which in the absence of any special provision for their valuation would be left in a very unsatisfactory position, namely, suits the subject of which does not admit of valuation on any intelligible basis. Such suits are usually valued at some low figure, and consequently may be heard without any reference to their importance or difficulty by Courts of the inferior grades. The necessity for making some special provision for them on the present occasion is the greater, inasmuch as, under the present Bill, the course of appeal will depend to a greater extent than before on the valuation.

We have accordingly introduced a new section (32) providing that, where the subject-matter of suits of any class is such that in the opinion of the Chief Court it does not admit of being satisfactorily valued, the Chief Court may, with the previous sanction of the Local Government, direct that such suits shall be treated as if the subject-matter were of such value as the Chief Court thinks fit to specify in this behalf.

14. The only other provision of this chapter which appears to call for notice is section 38. As we have explained, it is intended that the District Judge should have the general control of the administration of civil justice throughout his district; but there may be cases, as *e.g.*, that of Kulu, in which it would be convenient to delegate this control to a Subordinate Judge in some outlying portion of the district in somewhat the same way as certain powers of a District Magistrate are delegated to a Sub-divisional Officer under the Code of Criminal Procedure; and accordingly a power to effect such a delegation has been taken.

CHAPTER IV.

APPELLATE JURISDICTION IN CIVIL CASES.

15. We have omitted the words in the opening section of this chapter which conferred a power to place other classes of suits on the same footing as mufassal small causes for the purposes of appeal, the object in view being now sufficiently met by the new definition of "small cause" (in section 3), which gives power to place small causes within the meaning of the Presidency-towns Small Cause Courts Act on the same footing as mufassal small causes.

16. We have, moreover, restricted this section, as we have the entire chapter, to appeals from decrees as distinguished from orders, the latter being sufficiently provided for by the Code of Civil Procedure.

17. The subject of further appeals, which is dealt with in the following section, is one which has given rise to much discussion, and which is surrounded on all sides with difficulties of a serious nature. We have given to it the most careful and prolonged consideration, and have come to the conclusion that the right of further appeal allowed by the Bill as introduced must be extended in some important particulars.

The Bill as introduced allowed a further appeal from the appellate decree of a Divisional Bench only in two cases, namely, if the Judges differed *or* if some question of law or custom or of general interest was involved; and in these cases it did not allow the appeal as a matter of right, but only if both Judges, or when one had left the Court, the remaining one, certified that the case was of sufficient importance to justify a further appeal. Under the Bill as now amended a further appeal will lie as a matter of right and without any certificate from a Divisional Bench in all cases where the Judges differ. There will, moreover, be a further appeal in all cases in which any one Judge certifies that there is a question of law or custom or general interest involved, and that the case is in his opinion of sufficient importance to justify a further appeal. And, lastly, there will be a further appeal in cases of a class altogether new and not contemplated in the original Bill, namely, where the value of the suit exceeds Rs. 500.

The proviso barring a further appeal in small causes when the value does not exceed Rs. 500 is retained.

18. We have, as already indicated, made another alteration which is of considerable importance, and which it is convenient to notice here.

The Bill as introduced required that the Divisional Courts should consist in all instances of at least two Judges, that except as expressly provided no decision should be reversed except by a bench of two Judges, and that the restrictions on further appeal which we have described should apply to all Divisional Courts. To that objection was taken on the ground that there may be a difficulty in finding in the Panjáb a sufficient number of competent officers to furnish two Judges for each of the Divisional Courts proposed. We need hardly say that if the objection were well-founded it would be a serious one, inasmuch as the strict limitations on the right of further appeal to the Chief Court imposed by the original Bill were, though those limitations have now been relaxed in the important particulars already described, the Bill still proceeds on the assumption that a Divisional Bench will be a stronger, more reliable and more satisfactory tribunal than the Court of a Commissioner ordinarily now is.

19. It is of course impossible for us to say whether the precise number of competent officers required to constitute Benches in all the proposed Divisions is to be found in the Panjáb at this moment, but we understand that the Lieutenant-Governor has no misgivings on the point, and we think it may be safely affirmed that the difficulty of procuring a sufficient number of competent officers for the Benches has been much exaggerated.

In order, however, to guard against every possibility of miscarriage, we have now modified the Bill in such a way that, if the Lieutenant-Governor finds, at any time, that the materials required for establishing a Bench in any particular Division are not immediately available, he can make the Divisional Court there consist of a single Judge (section 19), and in the event of his doing so a further appeal will, subject only to the proviso as to small causes contained in section 40, lie from that Judge's appellate decrees precisely as they lie at present from the appellate decrees of a Commissioner [section 40, clause (*b*)].

CHAPTER V.

REVENUE COURTS.

20. We have recast this chapter, assimilating it in form and arrangement to the portion of the Bill relating to Civil Courts, and supplying certain omissions in details, as, *e. g.*, provisions relating to ministerial officers, which it seems unnecessary to notice more particularly.

21. We have omitted from the list of suits cognizable by Revenue Courts given in the first section the so-called suits under section 40 of the Panjáb Tenancy Act, inasmuch as we find on reference to that Act that the proceedings in question are not suits but applications, and we think that the proper mode of dealing with them is to include them among the applications to be heard on the revenue side which are specified in section 42 of that Act, and from which they were apparently omitted by an oversight. We have accordingly added a section (75) to the Bill amending section 42 of the Tenancy Act so as to include them.

22. We have added to the list of suits cognizable by Revenue Courts "suits to determine disputes regarding boundaries of land" (*i.e.*, of agricultural land) "which have been fixed by

a Court or Revenue-officer." This addition has been advocated by several of the authorities consulted, and it appears to us to be a proper one, seeing that all that is ordinarily required for the decision of such disputes is the laying down on the ground of a boundary which is to be found in a map.

23. On the other hand, we have appended to the section a proviso which empowers the Local Government, after consulting the Chief Court, to retransfer to the Civil Courts the jurisdiction in any class of revenue cases cognizable in any part of the country where it appears desirable to do so.

24. We have for convenience sake divided the classes of suits into two groups, and at the instance of the Local Government included class (*d*), suits for ejectment of a tenant, in the group containing suits deemed to be of greater importance or difficulty.

25. We have in defining the powers of Assistant Commissioners and Tahsíldárs [section 46 (2)], following the same course as in the provisions relating to original civil jurisdiction, omitted all minute specification of pecuniary limits, and left it to the Local Government to fix those limits as it thinks fit.

26. We have for the same reason as in the preceding chapter omitted all reference to appeals from orders.

27. We have introduced a clause in the proviso to section 47, based on similar provisions in the Rent Laws of Bengal and the North-Western Provinces, giving power to bar appeals from decrees of certain classes of officers in money-suits when the amount involved does not exceed Rs. 100 and no question of importance, such as a question of title, is involved.

28. We have added a section (51) empowering the Local Government to confer on any person the judicial powers, original or appellate, of a Financial Commissioner, Commissioner or Deputy Commissioner under this chapter.

29. We have, in order further to provide a means of relieving the Revenue Courts of the necessity of disposing of particular matters which may be found to be more proper for consideration by the Civil Courts, introduced two new sections (54 and 55).

The first of these is copied with certain modifications from section 208A of the North-Western Provinces Rent Act, 1881, and is intended to take the place of section 49 of the original Bill, which has been the subject of adverse criticism. It empowers a Revenue Court, when it considers that any question in issue before it is more proper for decision by a Civil Court, to require any party to institute a suit in the Civil Court with a view to obtaining a decision on the question. If he fails to comply with the requisition, the Revenue Court is empowered to decide the question against him, but is not bound to do so, as under the corresponding provision of the North-Western Provinces Act. If the party institutes the suit in the Civil Court, the Revenue Court will follow the decision of that Court.

30. It has been suggested that any provision of this sort is superfluous, inasmuch as a Revenue Court being a Court of limited jurisdiction, and its decision in one case being accordingly, under section 13 of the Code of Civil Procedure, binding in other cases only to a limited extent, it may safely be compelled to decide all questions arising incidentally in any suit before it, even though they may be questions which would be obviously more proper for the consideration of a Civil Court.

To this view of the matter we are unable to assent.

31. It is undoubtedly true that in many cases, probably in the great majority of cases, it is best for all parties that the Revenue Court should take upon itself to decide all questions incidentally arising in the suit, even though some of them might be of a nature more proper for the consideration of a Civil Court. This would clearly be the right course for the Revenue Court to take when the question is a simple one and can be quickly disposed of, or when it is one not likely to arise subsequently between the parties in any other connection; but it seems equally clear that when, as must occasionally happen, some complicated and difficult question arises in a revenue-suit, and is certain to arise again between the parties unless it is finally settled, a Revenue Court ought to be allowed some discretion of the sort proposed. For, if some such discretion is not allowed, what must be the result? The question must be tried out at a great expenditure of time and money to all concerned by the Revenue Court, which *ex hypothesi* is not the best Court to try it. It may then go in appeal to the higher Revenue Courts, probably in the last resort to the Financial Commissioner, and, after all, as the decision obtained will not be binding except for certain limited purposes, the whole litigation may commence *de novo* and run a similar course through the Civil Courts.

It is in order to provide a means of avoiding scandals of this sort that we have introduced the section in question.

32. We are quite aware that the power it confers might be abused by an indolent Revenue-officer if he were free to resort to it at pleasure, but we have guarded against this by making the sanction of the immediately superior Court a condition precedent to its exercise.

33. Section 55, to which there is nothing corresponding in the original Bill, empowers the Financial Commissioner to refer to the Chief Court a point of law which he considers that Court is more competent to decide.

34. We trust that these two sections and the proviso which we have appended to section 45 (see *supra*, paragraph 23) will suffice to remove the apprehensions which have been expressed in some quarters that the Bill may force upon the Revenue Courts duties which they will be incompetent to discharge.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

35. We have omitted section 63 of the original Bill, which provided for consultations between the two Financial Commissioners, as it is unnecessary to provide for such a matter by legislative enactment and the proposal to do so gave rise to some misapprehension.

36. We have likewise omitted section 66 of the original Bill, which expressly prohibited a Judicial Officer from disposing of a case in which he might appear to be interested. We are aware that such provisions have long found a place in our Courts Acts, but we think the matter is one on which legislation may well be dispensed with, the general principles applicable to it being perfectly well understood.

37. Section 68 of the original Bill, which reproduced section 48 of the present Panjáb Courts Act, gave power to the Government to appoint a single Judge to exercise the Chief Court's superintending functions. This power has never been exercised, and we are informed that the Government have no desire to retain it. We have accordingly omitted the section.

38. Sections 73 and 74 of the original Bill, which provide for the enhancement of the court-fees upon applications to the Chief Court for revision under section 622 of the Code of Civil Procedure, were introduced with a view to discouraging such applications. We fully approve of their provisions and have retained them in the revised Bill. From statistics put before us by our hon'ble colleague Mr. Barkley it appears that such applications have of late been increasing to a formidable extent in the Panjáb; and, as observed by him when he asked for leave to introduce the Bill, they are certain to increase with greater rapidity if the provisions of the Bill, which give greater finality to the decisions of the Lower Appellate Courts, become law. Moreover, from the circumstance that only about one-sixth of the applications now made to the Chief Court are successful it may be gathered that Panjáb litigants when debarred from appealing are tempted to incur the serious trouble and expense involved in making such applications, even where there may not be the slightest prospect of success. This appears to us to be a serious evil, and the only question has been whether the increase of the court-fee proposed in the original Bill would be enough to check it. The better opinion appears to us to be that it would have but a slight effect in that direction, and that nothing short of an alteration of section [illegible]

[illegible] we find that a considerable divergence of opinion has arisen between some of the highest Courts in the country as to the nature of the grounds required to support an application under that section. A full bench of the Allahabad High Court has held (I. L. R. 8 All. 203) that any grounds on which a second appeal would lie are sufficient. The practical result of this, as admitted by two of the learned Judges, is that section 622 of the Code gives a second appeal in all those cases in which the earlier sections of the Code expressly deny it. It may, no doubt, be said that the Court has a discretion under section 622 to interfere or not as it thinks fit, but we apprehend that as a rule a High Court holding the opinion just referred to, and finding what would be a good ground for special appeal made out, would be in practically the same position as if it were considering a special appeal under section 551.

40. A view which is probably more in accordance with that of those who framed the section was taken by a full bench of the Bombay High Court in a case reported in I. L. R. 7 Bom. 341. The conclusion to which the Court came in that case may be stated to be that the jurisdiction conferred by section 622 of the Code is an extraordinary jurisdiction to be exercised only in extraordinary cases, and that the precise circumstances under which it is to be exercised is left to the discretion of the Court and cannot be defined.

The question has not yet come before a full bench of the Panjáb Chief Court. It is impossible to predict what the result of its being fully considered by that Court would be; and, having regard to its intimate connection with the working of the present Bill, we do not think the matter should be left in uncertainty.

41. The root of the difficulty which has sprung up in connection with the section appears to lie in that portion of the wording introduced into the Code by Act XII of 1879, which empowers the High Court to interfere on the ground that the Lower Court has acted "illegally." The Allahabad High Court has construed this as justifying the High Court's interference whenever the Court below has erred on a question of law, and it is on this point mainly that the Bombay Court has dissented from the Allahabad decision. The divergence of opinion will no doubt have eventually to be met by an amendment of the Code, but the matter is not very pressing, where, as in most parts of the country at present, the proportion of cases in which appeals to the High Court are barred is comparatively small and a tendency to resort recklessly to the section has not developed itself among litigants.

42. In the Panjáb, on the contrary, the question is already pressing, and will become more so if this Bill is passed. We are therefore compelled to deal with it separately for that province; and the conclusion to which we have come after the most careful consideration, and having regard to the special circumstances of the Province and the peculiar features of the appellate system now proposed, is that the extraordinary jurisdiction conferred by section 622 of the Code should be exercisable only on the ground that the lower Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction with material irregularity. We propose, therefore (section 70 of the Bill), to limit the scope of section 622 of the Code in this way, and we believe that when so limited it will still be sufficiently wide to cover all cases which call for the exercise of revisional as distinguished from appellate jurisdiction.

43. The publication ordered by the Council has been made as follows :—

In English.

Gazette.	*Date.*
Gazette of India ...	... 5th, 12th and 19th July, 1884.
Panjáb Government Gazette ...	... 10th, 17th and 24th July, 1884.

In the Vernacular.

Province.	*Language.*	*Date.*
Panjáb	... Urdu	... 28th July, and 4th and 11th August, 1884.

We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

D. G. BARKLEY.
J. GIBBS.
C. P. ILBERT.
S. C. BAYLEY.
J. W. QUINTON.

The 25th September, 1884.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 11, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd October, 1884:—

No. 14 of 1884.

A Bill to repeal the Straits Settlements Emigration Act, 1877, and to amend the Indian Emigration Act, 1883.

V of 1877. XXI of 1883.

WHEREAS it is expedient to repeal the Straits Settlements Emigration Act, 1877, and to amend the Indian Emigration Act, 1883, in manner hereinafter appearing; It is hereby enacted as follows:—

1. The Straits Settlements Emigration Act, 1877, is repealed. V of 1877.

2. For section 102 of the Indian Emigration Act, 1883, the following section shall be substituted:— XXI of 1883.

New section substituted for section 102 of Act XXI of 1883.

Power for Governor General in Council to exempt emigration to Native States adjoining the Straits Settlements from Act.

"102. On and from such a date as the Governor General in Council may, by notification in the *Gazette of India*, fix in this behalf, a Native of India who departs by sea out of British India under an agreement to labour for hire in any protected Native State adjoining the Straits Settlements to which the notification refers shall not be deemed to emigrate within the meaning of this Act."

STATEMENT OF OBJECTS AND REASONS.

THE main object of this Bill is to repeal Act V of 1877 (the Straits Settlements Emigration Act, 1877), which extends only to the Madras Presidency. It is dictated by the policy which recently led to the enactment of Act VII of 1883, (to repeal the British Burma Labour Law, 1876.) As in the case of Burma, it is found that there is a system of "free emigration" to the Straits which not only competes with, but altogether distances, the Government system for which Act V of 1877 provides. From the information before it, the Government of India is of opinion that the latter has impeded instead of promoting emigration, that labour flows as naturally to and from the Straits as it does between Burma and India, and that attempts to control its movement in British territory merely induce it to seek an outlet from the French ports of Pondicherry and Karikal. Such provisions as in the opinion of the Government are necessary for the protection and control of the Indian immigrant after his arrival in the Straits have been embodied in a revised Labour Regulation, which is now before the Straits legislature, and will, it is expected, shortly become law. Under these circumstances, the Government of India considers that emigration from India to the Straits should be uncontrolled by law in this country save as regards the requirements of the Native Passengers Ships Act.

2. The repeal of Act V of 1877 necessitates, however, an amendment of section 102 of Act XXI of 1883 (the Indian Emigration Act, 1883). The first sub-section of that section provides for the extension of Act V of 1877 to other parts of British India. As the Act is itself now being repealed, it is clear that this sub-section should be repealed also. The second and third sub-sections of that section give the Governor General in Council power by notification to include any of the protected Native States adjoining the Straits Settlements within

the scope of any law relating to emigration to those Settlements, and exempt, on and from the date of any such notification, emigration to the protected State specified therein from the operation of Act XXI of 1883. Though there will no longer be any special law relating to emigration to the Straits, it is deemed desirable to retain the power, which these sub-sections confer, of exempting emigration to the protected States from Act XXI of 1883. A new section has therefore been substituted by section 2 of the Bill for section 102 of Act XXI of 1883 empowering the Governor General in Council to exempt emigration to the protected States from that Act whenever he considers such exemption to be desirable.

The 25th September, 1884.

S. C. BAYLEY.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Report of the Select Committee on the Bill to provide more effectually for the suppression of certain forms of Gaming in British Burma was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 25th September, 1884:—

WE, the undersigned members of the Select Committee to which the Bill to provide more effectually for the suppression of certain forms of Gaming in British Burma was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

From Officiating Secretary to Chief Commissioner, British Burma, No. 289-1L., dated 9th September, 1884 [Paper No. 1].
Telegram from Chief Commissioner, British Burma, dated 15th September, 1884 [Paper No. 2].

2. The following is an extract from the Chief Commissioner's telegram of the 15th instant:—

"Opinions received on Burma Gaming Bill induce me to urge following points:—

"*First*, we must make touts for *ti* punishable; so please, after word 'players' in section 4, insert words 'or who promotes the game by soliciting or collecting stakes or otherwise.'

"*Second*, I fear Courts may unduly restrict meaning of word 'place'; therefore, for first eight words in clause (2), section 3, please substitute words 'every place, whether enclosed or unenclosed.'

Thirdly, our 1st class Magistrates are few; therefore please add clause as follows:—

'The Local Government may specially authorize any Magistrate of the 2nd class to exercise the powers conferred by section 5 of Act III of 1867 on the Magistrate of the district.'

Fourthly, we want power to arrest touts in public places; therefore please add clause as follows:—

'A police-officer may apprehend without warrant any person soliciting or collecting stakes for *ti* or any other game of like nature in any public street, place or thoroughfare.'

"*Fifthly*, on advice of officers consulted, I agree that section 2 of Bill may be omitted."

3. We have adopted all these suggestions except the second; and, though the Chief Commissioner adds that he lays much stress on that suggestion, we do not think it would be possible to adopt it, at least in the shape in which he proposes it. It must be remembered that the Bill is not an independent measure, but is to be read with Act III of 1867; and, if the provisions of that Act relating to common gaming-houses be referred to, it will, we think, be found that some at least of them are such that if every "place," without any distinction or limitation whatever, was to be made a "common gaming-house," they could not fairly or reasonably be applied. It may indeed be doubted whether, apart from all consideration of the harshness which the proposed amendment would involve, some of those provisions could be applied to every "place" indiscriminately without giving rise to something approaching an absurdity.

4. We have, we need hardly say, considered whether it might not be desirable to give some extension to the definition of "common gaming-house" short of that proposed by the Chief Commissioner; but we think, having regard to English decisions on the provisions of Statutes worded in a manner somewhat similar to Act III of 1867 and the

present Bill, that the definition is as wide as it is desirable to make it. We think we may reasonably count on its being held, with reference to those decisions, to include all places which are sufficiently analogous to a house, walled enclosure or room to admit of being reasonably and fairly treated as gambling-houses for the purposes of the Act.

5. It must be remembered that the question here involved has little or no importance in practice except in its bearing on the position of persons who are induced to take tickets in the *ti;* for the managers and their assistants will in all cases be subject to severe penalties under separate provisions, which are completely independent of the definition of common gaming-house; and, as regards mere ticket-holders, it appears to us that it is sufficient if they are punishable under the common gaming-house provisions of the Bill and the Act as they now stand, and under the 13th section of the Act for gambling in public. We have, however, amended the last-mentioned section so as to give it a somewhat wider range in British Burma than it has elsewhere.

6. The publication ordered by the Council has been made as follows:—

In English.

Gazette.	*Date.*
Gazette of India	30th August, and 6th and 13th September, 1884.
British Burma Gazette	13th September, 1884.

In the Vernaculars.

Province.	*Language.*	*Date.*
British Burma ...	Burmese ...	13th 20th, and 27th September, 1884.

We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

C. P. ILBERT.
C. U. AITCHISON.
J. GIBBS.
J. W. QUINTON.

The 25th September, 1884.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Report of the Select Committee on the Bill to amend the Law relating to Local Self-government in British Burma was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 25th September, 1884:—

WE, the undersigned Members of the Select Committee to which the Bill to amend the law relating to Local Self-government in British Burma was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

From Officiating Secretary to Chief Commissioner, British Burma, No. 678-8R.M., dated 27th September, 1883, and enclosures [Papers No. 1].
From Officiating Junior Secretary to Chief Commissioner, British Burma, No. 88-8R.M., dated 4th October, 1883, and enclosures [Papers No. 2].
From Officiating Junior Secretary to Chief Commissioner, British Burma, No. 348-8R.M., dated 17th October, 1883, and enclosures [Papers No. 3].
From Officiating Junior Secretary to Chief Commissioner, British Burma, No. 537-8R.M., dated 27th December, 1883, and enclosure [Papers No. 4].
Office Memorandum from Home Department, No. 762, dated 9th May, 1884, and enclosures [Papers No. 5].
From Officiating Secretary to Chief Commissioner, British Burma, No. 481-1G.M., dated 17th June, 1884, and enclosure [Papers No. 6.

2. The Bill as now amended by us will be seen at a glance to differ considerably from the Bill as introduced. The difference is due chiefly to three causes.

3. In the first place, there has been a change in the main plan and scope of the measure. As explained in the Statement of Objects and Reasons, the original Bill was framed with a view to the inclusion within municipalities of adjoining rural areas. This course was taken, on the advice of the Local Government, in order to meet the requirements of certain rural tracts, until such time as it might be found possible to establish a system of local boards for rural districts.

From the papers since submitted, however, it appears that, upon fuller consideration, the weight of opinion is against the attempt to include in one municipality urban and rural tracts; and the Chief Commissioner now recommends that the Bill be confined, as we believe all the Municipal Acts on our Statute-book are, to urban tracts, the matter of local self-government in rural tracts being left to be dealt with separately hereafter.

In this recommendation we concur. The difficulty of framing the provisions of the Bill so as to fit in with conditions so essentially different as those of the towns and the adjoining tracts of country has turned out to be greater than was anticipated, and the call for the establishment of a system of local self-government in the rural tracts of British Burma is not so pressing as to justify our running the risk of passing an unsatisfactory measure for the sake of at once meeting it. We have accordingly reduced the Bill to the form of a Municipal Bill pure and simple.

4. Another difference between the original Bill and the present Bill is due to our having, at the request of the Chief Commissioner, adopted the course taken by the Select Committee on the Panjáb Municipal Bill of substituting for wide general powers to make rules detailed provisions regarding nuisances and other matters affecting the public health, safety and convenience. It is in this way that most of the new sections contained in Chapters VI and VII of the amended Bill are to be accounted for.

5. Lastly, the greater light thrown upon the needs of municipal government and on the difficulties likely to present themselves in the application of a Municipal Act by the prolonged discussions which took place in the Select Committee on the Panjáb Bill has led to numerous amendments in, or additions to, the Bill of minor importance. As examples we may refer to—

Section 27 (*e*) (distribution of executive powers and duties);

Section 28 (extraordinary powers of president and vice-president in case of emergency);

Sections 44 and 88 (powers to impose a scavenging-tax and to undertake the scavenging of private premises);

Sections 51-57 (special rules applicable to taxation of immoveable property);

Sections 60 and 61 (constitution and application of the municipal fund);

Sections 65-67 (provisions relating to municipal property);

Section 138 (settlement of disputes);

Sections 151-153 (relating to notices); and

Section 158 (which confers a power to exempt a municipality from any provisions of the Act which appear unsuitable to it).

This last section, we may observe, is specially necessary in view of the numerous and somewhat elaborate provisions now contained in Chapters VI and VII, some of which would probably be unsuitable in small municipalities.

6. We have now to notice such of the more important alterations of the Bill as are not accounted for by the foregoing remarks, or as otherwise seem to call for explanation.

7. Section 12 of the original Bill, which required a member of the municipal body to vacate his seat when appointed to a salaried municipal office, and section 29, which provided for the payment of fees to members for attendance at meetings, have been omitted; the former because it is not thought advisable that any person while a member of a committee should be appointed to a salaried office under the committee, and the latter because a municipal area can now comprise only a town and its immediate suburbs, and the members of the committee, being residents of that area and not having to travel any distance to the meetings, may reasonably be expected to give their services gratuitously.

8. We have, following the course taken in the Panjáb Bill, limited the rates to be imposed for water, lighting and scavenging only by providing (in effect) that they shall not exceed what is requisite to defray the cost of the services for which they are levied; and we have, as in the Panjáb Bill, provided that the proceeds of these rates shall be carried to the one municipal fund, separate accounts only being kept, instead of constituting separate funds.

9. We have substituted for section 47 of the original Bill, which required a municipal committee to make grants-in-aid to schools in accordance with such rules as the Government might make, a section (62) specifically appropriating to educational purposes the income for schools and all sums acquired by the committee in trust for educational purposes, and further requiring the assignment for educational purposes from the general municipal revenues of such sum annually, not being more than 5 per cent. of the gross annual income of the municipality, as the Local Government may fix.

This section has been suggested by the Chief Commissioner with the view of meeting practical difficulties which have occurred in British Burma, and is, in his opinion, indispensable for the purpose of carrying out the educational policy which has recently been established in that province, and under which the municipalities, whilst relieved of police-charges, have been required to provide for the maintenance of local schools. It will be observed that the section, while it compels the committee to devote a certain minimum of its funds to educational purposes, imposes no such restriction as might have been imposed under the original section as regards the particular objects on which the money shall be spent.

10. The Chief Commissioner has in an unofficial communication proposed certain modifications in and additions to the new provisions introduced from the Panjáb Bill in Chapters VI and VII. Most of these are of minor importance, and we have in general adopted them, omitting only such as appeared to us superfluous or unnecessarily stringent. In one instance we, however, have found it necessary to omit a section of considerable importance proposed by the Chief Commissioner, namely, a section similar to section 14 of Act XLVIII of 1860 giving a certain power of control over brothels and other disorderly houses; but that section we have omitted merely because we think the matter is one to be dealt with by the Magistrates and police rather than by a municipal committee.

11. The only other point which appears to call for notice in connection with this portion of the Bill is that we have substituted two sections (125 and 127) based on similar sections in the Public Health Act, 1875, for a section proposed by the Chief Commissioner, to guard against the spread of infectious diseases through the medium of public conveyances.

12. Sections 49 to 51 of the original Bill provided for the exercise by a municipal committee or its members of certain magisterial powers in nuisance cases. We have omitted these sections for the same reasons that have led to the omission of the corresponding sections of other Municipal Bills recently before the Council, namely, that a section like section 49 could have little practical effect, and that it is not desirable that the powers given by the other two sections should be conferred.

13. We have not thought it advisable to adopt a proposal made by the Chief Commissioner that the Local Government should be empowered to invest municipal officers with the powers of police-officers for the purposes of section 34 of the Police Act (V of 1861).

14. We have added a clause to section 133 providing that the powers of control over municipalities, conferred by that section on the Commissioner and Deputy Commissioner, shall, in the case of the municipalities of Rangoon, Moulmein, Akyab and Bassein, be exercised not by those officers but by the Local Government.

15. Lastly, we have to state that we have considered a proposal of the Chief Commissioner to the effect that the appropriation provisions of the Bill should be modified in such a manner as to admit of a municipal committee subscribing to a public band or contributing to fireworks or the like on great occasions. We have not adopted this proposal, because the objects in question appear to us to lie beyond the sphere of the purposes for which municipal taxation is raised in this country.

16. The publication ordered by the Council has been made as follows:—

In English.

Gazette.		*Date.*
Gazette of India	...	21st and 28th July, and 4th August, 1883.
British Burma Gazette	...	11th, 18th and 25th August, 1883.

In the Vernaculars.

Province.		*Language.*		*Date.*
British Burma	...	Burmese	...	25th August, and 1st and 8th September, 1883.

We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

C. P. ILBERT.

J. GIBBS.

T. C. HOPE.

J. W. QUINTON.

D. G. BARKLEY.

The 25th September, 1884.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Report of the Select Committee on the Bill to amend the law relating to Courts in the Panjáb was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 25th September, 1884:—

WE, the undersigned Members of the Select Committee to which the Bill to amend the law relating to Courts in the Panjáb was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

Extract from the *Tribune* of 5th July, 1884 [Paper No. 1].
Extract from the *Tribune* of 12th July, 1884 [Paper No. 2].
Extract from the *Hindoo Patriot* of 14th July, 1884 [Paper No. 3].
Extract from the *Tribune* of 19th July, 1884 [Paper No. 4].
Extract from the *Tribune* of 26th July, 1884 [Paper No. 5].
Extract from the *Tribune* of 2nd August, 1884 [Paper No. 6].
Extract from the *Tribune* of 9th August, 1884 [Paper No. 7].
Extract from the *Tribune* of 16th August, 1884 [Paper No. 8].
From Officiating Secretary to Government, Panjáb, No. 4078., dated 26th August, 1884, and enclosures [Papers No. 9].
Extract from the *Civil and Military Gazette* of 21st August, 1884 [Paper No. 10].
From President, Indian Association, Lahore, dated 30th August, 1884, and enclosure [Papers No. 11].
Extract from the *Tribune* of 23rd August, 1884 [Paper No. 12].
Extract from the *Civil and Military Gazette* of 25th August, 1884 [Paper No. 13].
From Officiating Secretary to Government, Panjáb, No. 4478., dated 4th September, 1884, and enclosure [Papers No. 14].
From Officiating Secretary to Government, Panjáb, No. 4458., dated 6th September, 1884, and enclosure [Papers No. 15].
Endorsement by Officiating Under-Secretary to Government of India, Home Department, No. 1215, dated 15th September, 1884, and enclosures [Papers No. 16].

2. We have rearranged the provisions of the Bill in a manner which we trust will make them more readily intelligible; and in the following remarks we shall as far as possible take the sections in their new order.

CHAPTER II.

THE CHIEF COURT.

3. It will be observed that under the proviso to section 8, sub-section (1), a single Judge of the Chief Court is prohibited from revising or modifying any proceeding of a lower Court except an "order" within the meaning of the Code of Civil Procedure. The restriction thus imposed does not, we believe, differ to any important extent from that contained in the corresponding provision (section 21, proviso) of the original Bill, and it relieves us of the necessity of using the phrase "interlocutory order," to which some difficulty attached.

4. We have also modified the last sub-section of section 8 by placing in the hands of the Senior Judge the power of determining which Judges of the Chief Court shall sit alone and which shall constitute benches, instead of leaving the power to be delegated by the Court to such Judge as it might think fit.

5. We have in section 14 added to the matters in respect of which the Chief Court is empowered to make rules—

(1) the translation of papers filed in the Chief Court and copying or printing any such papers or translations, and the payment by parties of the expenses thereby incurred; and

(2) the procedure in cases where a person is entitled to inspect a record of any Court or obtain a copy of it, and the fees payable for searches and copies.

We believe that these matters have long been dealt with by the Chief Court at its discretion, and we think it well that the power to deal with them should be placed on a legal basis.

CHAPTER III.

THE SUBORDINATE CIVIL COURTS.

6. The enumeration of the subordinate Civil Courts in section 17* differs from that in section 4 of the original Bill, but the substantive changes involved are smaller than might at first sight be supposed.

* (*a*) The Divisional Court.
(*b*) The Court of the District Judge.
(*c*) The Court of the Subordinate Judge.
(*d*) The Court of the Munsif.

The Divisional Court corresponds, with certain modifications, which we shall presently have to notice, to the Divisional Court of the original Bill.

7. The District Judge corresponds to the Assistant Judge of the original Bill, but his position as controlling the administration of civil justice in the district is somewhat the same manner as the District Magistrate under the Criminal Procedure Code controls the administration of criminal justice is more clearly brought out; and (section 23) his Court is, subject to certain exceptions, made the District Court for the purposes of those Acts which confer special powers on a District Court.

8. The Subordinate Judge corresponds to the Subordinate Judge of the first class of the original Bill, but we have, instead of fixing a pecuniary limit to his jurisdiction as in section 36 of the original Bill, empowered the Local Government to do so (section 26). It will thus be in the power of the Local Government to limit the jurisdiction of a Subordinate Judge to any sum it thinks fit, or to confer upon him the unlimited jurisdiction exercised by a District Judge in original suits.

9. The Munsif of the amended Bill is intended to comprise the second, third and fourth classes of Subordinate Judges of the original Bill, and his powers in original suits have been dealt with in a manner similar to that just described; that is to say, it is left (section 26) to the Chief Court to invest each Munsif with such powers as it thinks fit, provided that the limit of value does not exceed Rs. 1,000, which was the limit for Subordinate Judges of the second class under section 36 of the original Bill.

10. It will be observed that section 19 introduces an important change as regards the constitution of the Divisional Court; but as that change will be more conveniently explained when we come to speak of the appellate jurisdictions, it only remains to notice here that we have in the proviso to section 21 put the restriction on the powers of one of several Judges of a Divisional Court sitting alone on the same footing as the similar restriction in the case of the Chief Court (*supra*, paragraph 3).

11. We have inserted a new section (29), similar to section 27 of the Bengal Courts Act, providing for the transfer to a Subordinate Judge or Munsif of business under Act XXVII of 1860, Act XL of 1858 and Act IX of 1861.

12. In the section (now 30) which empowers the Local Government to confer the powers of a Small Cause Court Judge on certain judicial officers, we have, as in other cases, omitted all minute specification of pecuniary limits, and simply provided that the Local Government may confer such powers as it thinks fit within the limit of Rs. 500.

13. In dealing with a Bill of this description it is impossible to overlook the difficulties which present themselves in connection with the valuation of certain classes of suits for the purpose of determining the original jurisdiction and the course of appeal. The question of the simplest mode of valuing suits for the recovery of land is at present under the consideration of the Government of India, and we have not accordingly felt ourselves called upon to take it up; but there are certain other classes of suits which in the absence of any special provision for their valuation would be left in a very unsatisfactory position, namely, suits the subject of which does not admit of valuation on any intelligible basis. Such suits are usually valued at some low figure, and consequently may be heard without any reference to their importance or difficulty by Courts of the inferior grades. The necessity for making some special provision for them on the present occasion is the greater, inasmuch as, under the present Bill, the course of appeal will depend to a greater extent than before on the valuation.

We have accordingly introduced a new section (32) providing that, where the subject-matter of suits of any class is such that in the opinion of the Chief Court it does not admit of being satisfactorily valued, the Chief Court may, with the previous sanction of the Local Government, direct that such suits shall be treated as if the subject-matter were of such value as the Chief Court thinks fit to specify in this behalf.

14. The only other provision of this chapter which appears to call for notice is section 38. As we have explained, it is intended that the District Judge should have the general control of the administration of civil justice throughout his district; but there may be cases, as *e.g.*, that of Kulu, in which it would be convenient to delegate this control to a Subordinate Judge in some outlying portion of the district in somewhat the same way as certain powers of a District Magistrate are delegated to a Sub-divisional Officer under the Code of Criminal Procedure; and accordingly a power to effect such a delegation has been taken.

CHAPTER IV.

APPELLATE JURISDICTION IN CIVIL CASES.

15. We have omitted the words in the opening section of this chapter which conferred a power to place other classes of suits on the same footing as mufassal small causes for the purposes of appeal, the object in view being now sufficiently met by the new definition of "small cause" (in section 3), which gives power to place small causes within the meaning of the Presidency-towns Small Cause Courts Act on the same footing as mufassal small causes.

16. We have, moreover, restricted this section, as we have the entire chapter, to appeals from decrees as distinguished from orders, the latter being sufficiently provided for by the Code of Civil Procedure.

17. The subject of further appeals, which is dealt with in the following section, is one which has given rise to much discussion, and which is surrounded on all sides with difficulties of a serious nature. We have given to it the most careful and prolonged consideration, and have come to the conclusion that the right of further appeal allowed by the Bill as introduced must be extended in some important particulars.

The Bill as introduced allowed a further appeal from the appellate decree of a Divisional Bench only in two cases, namely, if the Judges differed *or* if some question of law or custom or of general interest was involved; and in these cases it did not allow the appeal as a matter of right, but only if both Judges, or when one had left the Court, the remaining one, certified that the case was of sufficient importance to justify a further appeal. Under the Bill as now amended a further appeal will lie as a matter of right and without any certificate from a Divisional Bench in all cases where the Judges differ. There will, moreover, be a further appeal in all cases in which any one Judge certifies that there is a question of law or custom or general interest involved, and that the case is in his opinion of sufficient importance to justify a further appeal. And, lastly, there will be a further appeal in cases of a class altogether new and not contemplated in the original Bill, namely, where the value of the suit exceeds Rs. 500.

The proviso barring a further appeal in small causes when the value does not exceed Rs. 500 is retained.

18. We have, as already indicated, made another alteration which is of considerable importance, and which it is convenient to notice here.

The Bill as introduced required that the Divisional Courts should consist in all instances of at least two Judges, that except as expressly provided no decision should be reversed except by a bench of two Judges, and that the restrictions on further appeal which we have described should apply to all Divisional Courts. To that objection was taken on the ground that there may be a difficulty in finding in the Panjáb a sufficient number of competent officers to furnish two Judges for each of the Divisional Courts proposed. We need hardly say that if the objection were well-founded it would be a serious one, inasmuch as the strict limitations on the right of further appeal to the Chief Court imposed by the original Bill were framed in reliance on the strength of the Divisional Benches; and though those limitations have now been relaxed in the important particulars already described, the Bill still proceeds on the assumption that a Divisional Bench will be a stronger, more reliable and more satisfactory tribunal than the Court of a Commissioner ordinarily now is.

19. It is of course impossible for us to say whether the precise number of competent officers required to constitute Benches in all the proposed Divisions is to be found in the Panjáb at this moment, but we understand that the Lieutenant-Governor has no misgivings on the point, and we think it may be safely affirmed that the difficulty of procuring a sufficient number of competent officers for the Benches has been much exaggerated.

In order, however, to guard against every possibility of miscarriage, we have now modified the Bill in such a way that, if the Lieutenant-Governor finds, at any time, that the materials required for establishing a Bench in any particular Division are not immediately available, he can make the Divisional Court there consist of a single Judge (section 19), and in the event of his doing so a further appeal will, subject only to the proviso as to small causes contained in section 40, lie from that Judge's appellate decrees precisely as they lie at present from the appellate decrees of a Commissioner [section 40, clause (*b*)].

CHAPTER V.

REVENUE COURTS.

20. We have recast this chapter, assimilating it in form and arrangement to the portion of the Bill relating to Civil Courts, and supplying certain omissions in details, as, *e.g.*, provisions relating to ministerial officers, which it seems unnecessary to notice more particularly.

21. We have omitted from the list of suits cognizable by Revenue Courts given in the first section the so-called suits under section 40 of the Panjáb Tenancy Act, inasmuch as we find on reference to that Act that the proceedings in question are not suits but applications, and we think that the proper mode of dealing with them is to include them among the applications to be heard on the revenue side which are specified in section 42 of that Act, and from which they were apparently omitted by an oversight. We have accordingly added a section (75) to the Bill amending section 42 of the Tenancy Act so as to include them.

22. We have added to the list of suits cognizable by Revenue Courts "suits to determine disputes regarding boundaries of land" (*i.e.*, of agricultural land) "which have been fixed by

a Court or Revenue-officer." This addition has been advocated by several of the authorities consulted, and it appears to us to be a proper one, seeing that all that is ordinarily required for the decision of such disputes is the laying down on the ground of a boundary which is to be found in a map.

23. On the other hand, we have appended to the section a proviso which empowers the Local Government, after consulting the Chief Court, to retransfer to the Civil Courts the jurisdiction in any class of revenue cases cognizable in any part of the country where it appears desirable to do so.

24. We have for convenience sake divided the classes of suits into two groups, and at the instance of the Local Government included class (*d*), suits for ejectment of a tenant, in the group containing suits deemed to be of greater importance or difficulty.

25. We have in defining the powers of Assistant Commissioners and Tahsíldárs [section 46 (2)], following the same course as in the provisions relating to original civil jurisdiction, omitted all minute specification of pecuniary limits, and left it to the Local Government to fix those limits as it thinks fit.

26. We have for the same reason as in the preceding chapter omitted all reference to appeals from orders.

27. We have introduced a clause in the proviso to section 47, based on similar provisions in the Rent Laws of Bengal and the North-Western Provinces, giving power to bar appeals from decrees of certain classes of officers in money-suits when the amount involved does not exceed Rs. 100 and no question of importance, such as a question of title, is involved.

28. We have added a section (51) empowering the Local Government to confer on any person the judicial powers, original or appellate, of a Financial Commissioner, Commissioner or Deputy Commissioner under this chapter.

29. We have, in order further to provide a means of relieving the Revenue Courts of the necessity of disposing of particular matters which may be found to be more proper for consideration by the Civil Courts, introduced two new sections (54 and 55).

The first of these is copied with certain modifications from section 208A of the North-Western Provinces Rent Act, 1881, and is intended to take the place of section 49 of the original Bill, which has been the subject of adverse criticism. It empowers a Revenue Court, when it considers that any question in issue before it is more proper for decision by a Civil Court, to require any party to institute a suit in the Civil Court with a view to obtaining a decision on the question. If he fails to comply with the requisition, the Revenue Court is empowered to decide the question against him, but is not bound to do so, as under the corresponding provision of the North-Western Provinces Act. If the party institutes the suit in the Civil Court, the Revenue Court will follow the decision of that Court.

30. It has been suggested that any provision of this sort is superfluous, inasmuch as a Revenue Court being a Court of limited jurisdiction, and its decision in one case being accordingly, under section 13 of the Code of Civil Procedure, binding in other cases only to a limited extent, it may safely be compelled to decide all questions arising incidentally in any suit before it, even though they may be questions which would be obviously more proper for the consideration of a Civil Court.

To this view of the matter we are unable to assent.

31. It is undoubtedly true that in many cases, probably in the great majority of cases, it is best for all parties that the Revenue Court should take upon itself to decide all questions incidentally arising in the suit, even though some of them might be of a nature more proper for the consideration of a Civil Court. This would clearly be the right course for the Revenue Court to take when the question is a simple one and can be quickly disposed of, or when it is one not likely to arise subsequently between the parties in any other connection; but it seems equally clear that when, as must occasionally happen, some complicated and difficult question arises in a revenue-suit, and is certain to arise again between the parties unless it is finally settled, a Revenue Court ought to be allowed some discretion of the sort proposed. For, if some such discretion is not allowed, what must be the result? The question must be tried out at a great expenditure of time and money to all concerned by the Revenue Court, which *ex hypothesi* is not the best Court to try it. It may then go in appeal to the higher Revenue Courts, probably in the last resort to the Financial Commissioner, and, after all, as the decision obtained will not be binding except for certain limited purposes, the whole litigation may commence *de novo* and run a similar course through the Civil Courts.

It is in order to provide a means of avoiding scandals of this sort that we have introduced the section in question.

32. We are quite aware that the power it confers might be abused by an indolent Revenue-officer if he were free to resort to it at pleasure, but we have guarded against this by making the sanction of the immediately superior Court a condition precedent to its exercise.

33. Section 55, to which there is nothing corresponding in the original Bill, empowers the Financial Commissioner to refer to the Chief Court a point of law which he considers that Court is more competent to decide.

34. We trust that these two sections and the proviso which we have appended to section 45 (see *supra*, paragraph 23) will suffice to remove the apprehensions which have been expressed in some quarters that the Bill may force upon the Revenue Courts duties which they will be incompetent to discharge.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

35. We have omitted section 63 of the original Bill, which provided for consultations between the two Financial Commissioners, as it is unnecessary to provide for such a matter by legislative enactment and the proposal to do so gave rise to some misapprehension.

36. We have likewise omitted section 66 of the original Bill, which expressly prohibited a judicial officer from disposing of a case in which he might appear to be interested. We are aware that such provisions have long found a place in our Courts Acts, but we think the matter is one in which legislation may well be dispensed with, the general principles applicable to it being perfectly well understood.

37. Section 68 of the original Bill, which reproduced section 48 of the present Panjáb Courts Act, gave power to the Government to appoint a single Judge to exercise the Chief Court's superintending functions. This power has never been exercised, and we are informed that Government have no desire to retain it. We have accordingly omitted the section.

38. Sections 73 and 74 of the original Bill, which provide for the enhancement of the court-fees upon applications to the Chief Court for revision under section 622 of the Code of Civil Procedure, were introduced with a view to discouraging such applications. We fully approve of their principle and have retained them in the revised Bill. From statistics put before us by our hon'ble colleague Mr. Barkley it appears that such applications have of late been increasing to a formidable extent in the Panjáb; and, as observed by him when he asked for leave to introduce the Bill, they are certain to increase with greater rapidity if the provisions of the Bill, which give greater finality to the decisions of the Lower Appellate Courts, become law. Moreover, from the circumstance that only about one-sixth of the applications now made to the Chief Court are successful, it may be gathered that Panjáb litigants when debarred from appealing are tempted to incur the serious trouble and expense involved in making such applications, even where there may not be the slightest prospect of success. This appears to us to be a serious evil, and the only question has been whether the increase of the court-fee proposed in the original Bill would be enough to check it. The better opinion appears to us to be that it would have but a slight effect in that direction, and that nothing short of an alteration of section 622 of the Code as applied to the Panjáb will suffice.

39. We find that a considerable divergence of opinion has arisen between some of the highest Courts in the country as to the nature of the grounds required to support an application under that section. A full bench of the Allahabad High Court has held (I. L. R. 3 All. 203) that any grounds on which a second appeal would lie are sufficient. The practical result of this, as admitted by two of the learned Judges, is that section 622 of the Code gives a second appeal in all those cases in which the earlier sections of the Code expressly deny it. It may, no doubt, be said that the Court has a discretion under section 622 to interfere or not as it thinks fit, but we apprehend that as a rule a High Court holding the opinion just referred to, and finding what would be a good ground for special appeal made out, would be in practically the same position as if it were considering a special appeal under section 551.

40. A view which is probably more in accordance with that of those who framed the section was taken by a full bench of the Bombay High Court in a case reported in I. L. R. 7 Bom. 341. The conclusion to which the Court came in that case may be stated to be that the jurisdiction conferred by section 622 of the Code is an extraordinary jurisdiction to be exercised only in extraordinary cases, and that the precise circumstances under which it is to be exercised is left to the discretion of the Court and cannot be defined.

The question has not yet come before a full bench of the Panjáb Chief Court. It is impossible to predict what the result of its being fully considered by that Court would be; and, having regard to its intimate connection with the working of the present Bill, we do not think the matter should be left in uncertainty.

41. The root of the difficulty which has sprung up in connection with the section appears to lie in that portion of the wording introduced into the Code by Act XII of 1879, which empowers the High Court to interfere on the ground that the Lower Court has acted "illegally." The Allahabad High Court has construed this as justifying the High Court's interference whenever the Court below has erred on a question of law, and it is on this point mainly that the Bombay Court has dissented from the Allahabad decision. The divergence of opinion will no doubt have eventually to be met by an amendment of the Code, but the matter is not very pressing, where, as in most parts of the country at present, the proportion of cases in which appeals to the High Court are barred is comparatively small and a tendency to resort recklessly to the section has not developed itself among litigants.

42. In the Panjáb, on the contrary, the question is already pressing, and will become more so if this Bill is passed. We are therefore compelled to deal with it separately for that province; and the conclusion to which we have come after the most careful consideration, and having regard to the special circumstances of the Province and the peculiar features of the appellate system now proposed, is that the extraordinary jurisdiction conferred by section 622 of the Code should be exerciseable only on the ground that the lower Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction with material irregularity. We propose, therefore (section 70 of the Bill), to limit the scope of section 622 of the Code in this way, and we believe that when so limited it will still be sufficiently wide to cover all cases which call for the exercise of revisional as distinguished from appellate jurisdiction.

43. The publication ordered by the Council has been made as follows:—

In English.

Gazette.	*Date.*
Gazette of India ...	5th, 12th and 19th July, 1884.
Panjáb Government Gazette ...	16th, 17th and 24th July, 1884.

In the Vernacular.

Province.	*Language.*	*Date.*
Panjáb	... Urdu	... 28th July, and 4th and 11th August, 1884.

We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

D. G. BARKLEY.
J. GIBBS.
C. P. ILBERT.
S. C. BAYLEY.
J. W. QUINTON.

The 25th September, 1884.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 18, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd October, 1884:—

No. 14 OF 1884.

A Bill to repeal the Straits Settlements Emigration Act, 1877, and to amend the Indian Emigration Act, 1883.

WHEREAS it is expedient to repeal the Straits Settlements Emigration Act, 1877, and to amend the Indian Emigration Act, 1883, in manner hereinafter appearing; It is hereby enacted as follows:—

1877, V. of 1883.

1. The Straits Settlements Emigration Act, 1877, is repealed. V of 1877.

2. For section 102 of the Indian Emigration Act, 1883, the following section shall be substituted:— XXI of 1883.

New section substituted for section 102 of Act XXI of 1883.

"102. On and from such a date as the Governor General in Council may, by notification in the *Gazette of India*, fix in this behalf, a Native of India who departs by sea out of British India under an agreement to labour for hire in any protected Native State adjoining the Straits Settlements to which the notification refers shall not be deemed to emigrate within the meaning of this Act."

Power for Governor General in Council to exempt emigration to Native States adjoining the Straits Settlements from Act.

STATEMENT OF OBJECTS AND REASONS.

THE main object of this Bill is to repeal Act V of 1877 (the Straits Settlements Emigration Act, 1877), which extends only to the Madras Presidency. It is dictated by the policy which recently led to the enactment of Act VII of 1883, (to repeal the British Burma Labour Law, 1876.) As in the case of Burma, it is found that there is a system of "free emigration" to the Straits which not only competes with, but altogether distances, the Government system for which Act V of 1877 provides. From the information before it, the Government of India is of opinion that that Act has impeded instead of promoting emigration, that labour flows as naturally to and from the Straits as it does between Burma and India, and that attempts to control its movement in British territory merely induce it to seek an outlet from the French ports of Pondicherry and Karikal. Such provisions as in the opinion of the Government are necessary for the protection and control of the Indian immigrant after his arrival in the Straits have been embodied in a revised Labour Regulation, which is now before the Straits legislature, and will, it is expected, shortly become law. Under these circumstances, the Government of India considers that emigration from India to the Straits should be uncontrolled by law in this country save as regards the requirements of the Native Passengers Ship Act.

2. The repeal of Act V of 1877 necessitates, however, an amendment of section 102 of Act XXI of 1883 (the Indian Emigration Act, 1883). The first sub-section of that section provides for the extension of Act V of 1877 to other parts of British India. As the Act is itself now being repealed, it is clear that this sub-section should be repealed also. The second and third sub-sections of that section give the Governor General in Council power by notification to include any of the protected Native States adjoining the Straits Settlements within

the scope of any law relating to emigration to those Settlements, and exempt, on and from the date of any such notification, emigration to the protected State specified therein from the operation of Act XXI of 1883. Though there will no longer be any special law relating to emigration to the Straits, it is deemed desirable to retain the power, which these sub-sections confer, of exempting emigration to the protected States from Act XXI of 1883. A new section has therefore been substituted by section 2 of the Bill for section 102 of Act XXI of 1883 empowering the Governor General in Council to exempt emigration to the protected States from that Act whenever he considers such exemption to be desirable.

The 25th September, 1884.

S. C. BAYLEY.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Report of the Select Committee on the Bill to provide more effectually for the suppression of certain forms of Gaming in British Burma was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 25th September, 1884:—

WE, the undersigned members of the Select Committee to which the Bill to provide more effectually for the suppression of certain forms of Gaming in British Burma was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

From Officiating Secretary to Chief Commissioner, British Burma, No. 289-1L., dated 9th September, 1884 [Paper No. 1].
Telegram from Chief Commissioner, British Burma, dated 15th September, 1884 [Paper No. 2].

2. The following is an extract from the Chief Commissioner's telegram of the 15th instant:—

"Opinions received on Burma Gaming Bill induce me to urge following points:—

"*First*, we must make touts for *ti* punishable; so please, after word 'players' in section 4, insert words 'or who promotes the game by soliciting or collecting stakes or otherwise.'

"*Second*, I fear Courts may unduly restrict meaning of word 'place'; therefore, for first eight words in clause (2), section 3, please substitute words 'every place, whether enclosed or unenclosed.'

Thirdly, our 1st class Magistrates are few; therefore please add clause as follows:—

'The Local Government may specially authorize any Magistrate of the 2nd class to exercise the powers conferred by section 5 of Act III of 1867 on the Magistrate of the district.'

Fourthly, we want power to arrest touts in public places; therefore please add clause as follows:—

'A police-officer may apprehend without warrant any person soliciting or collecting stakes for *ti* or any other game of like nature in any public street, place or thoroughfare.'

"*Fifthly*, on advice of officers consulted, I agree that section 2 of Bill may be omitted."

3. We have adopted all these suggestions except the second; and, though the Chief Commissioner adds that he lays much stress on that suggestion, we do not think it would be possible to adopt it, at least in the shape in which he proposes it. It must be remembered that the Bill is not an independent measure, but is to be read with Act III of 1867; and, if the provisions of that Act relating to common gaming-houses be referred to, it will, we think, be found that some at least of them are such that if every "place," without any distinction or limitation whatever, was to be made a "common gaming-house," they could not fairly or reasonably be applied. It may indeed be doubted whether, apart from all consideration of the harshness which the proposed amendment would involve, some of those provisions could be applied to every "place" indiscriminately without giving rise to something approaching an absurdity.

4. We have, we need hardly say, considered whether it might not be desirable to give some extension to the definition of "common gaming-house" short of that proposed by the Chief Commissioner; but we think, having regard to English decisions on the provisions of Statutes worded in a manner somewhat similar to Act III of 1867 and the

present Bill, that the definition is as wide as it is desirable to make it. We think we may reasonably count on its being held, with reference to those decisions, to include all places which are sufficiently analogous to a house, walled enclosure or room to admit of being reasonably and fairly treated as gambling-houses for the purposes of the Act.

5. It must be remembered that the question here involved has little or no importance in practice except in its bearing on the position of persons who are induced to take tickets in the *ti;* for the managers and their assistants will in all cases be subject to severe penalties under separate provisions, which are completely independent of the definition of common gaming-house; and, as regards mere ticket-holders, it appears to us that it is sufficient if they are punishable under the common gaming-house provisions of the Bill and the Act as they now stand, and under the 13th section of the Act for gambling in public. We have, however, amended the last-mentioned section so as to give it a somewhat wider range in British Burma than it has elsewhere.

6. The publication ordered by the Council has been made as follows:—

In English.

Gazette.	*Date.*
Gazette of India	30th August, and 6th and 13th September, 1884.
British Burma Gazette	13th September, 1884.

In the Vernaculars.

Province.	*Language.*	*Date.*
British Burma ...	Burmese ...	13th 20th, and 27th September, 1884.

We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

C. P. ILBERT.
C. U. AITCHISON.
J. GIBBS.
J. W. QUINTON.

The 25th September, 1884.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Report of the Select Committee on the Bill to amend the Law relating to Local Self-government in British Burma was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 25th September, 1884:—

WE, the undersigned Members of the Select Committee to which the Bill to amend the law relating to Local Self-government in British Burma was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

From Officiating Secretary to Chief Commissioner, British Burma, No. 678-8R.M., dated 27th September, 1883, and enclosures [Papers No. 1].
From Officiating Junior Secretary to Chief Commissioner, British Burma, No. 88-8R.M., dated 4th October, 1883, and enclosures [Papers No. 2].
From Officiating Junior Secretary to Chief Commissioner, British Burma, No. 348-8R.M., dated 17th October, 1883, and enclosures [Papers No. 3].
From Officiating Junior Secretary to Chief Commissioner, British Burma, No. 537-8R.M., dated 27th December, 1883, and enclosure [Papers No. 4].
Office Memorandum from Home Department, No. 762, dated 9th May, 1884, and enclosures [Papers No. 5].
From Officiating Secretary to Chief Commissioner, British Burma, No. 481-1G.M., dated 17th June, 1884, and enclosure [Papers No. 6.

2. The Bill as now amended by us will be seen at a glance to differ considerably from the Bill as introduced. The difference is due chiefly to three causes.

3. In the first place, there has been a change in the main plan and scope of the measure. As explained in the Statement of Objects and Reasons, the original Bill was framed with a view to the inclusion within municipalities of adjoining rural areas. This course was taken, on the advice of the Local Government, in order to meet the requirements of certain rural tracts, until such time as it might be found possible to establish a system of local boards for rural districts.

From the papers since submitted, however, it appears that, upon fuller consideration, the weight of opinion is against the attempt to include in one municipality urban and rural tracts; and the Chief Commissioner now recommends that the Bill be confined, as we believe all the Municipal Acts on our Statute-book are, to urban tracts, the matter of local self-government in rural tracts being left to be dealt with separately hereafter.

In this recommendation we concur. The difficulty of framing the provisions of the Bill so as to fit in with conditions so essentially different as those of the towns and the adjoining tracts of country has turned out to be greater than was anticipated, and the call for the establishment of a system of local self-government in the rural tracts of British Burma is not so pressing as to justify our running the risk of passing an unsatisfactory measure for the sake of at once meeting it. We have accordingly reduced the Bill to the form of a Municipal Bill pure and simple.

4. Another difference between the original Bill and the present Bill is due to our having, at the request of the Chief Commissioner, adopted the course taken by the Select Committee on the Panjáb Municipal Bill of substituting for wide general powers to make rules detailed provisions regarding nuisances and other matters affecting the public health, safety and convenience. It is in this way that most of the new sections contained in Chapters VI and VII of the amended Bill are to be accounted for.

5. Lastly, the greater light thrown upon the needs of municipal government and on the difficulties likely to present themselves in the application of a Municipal Act by the prolonged discussions which took place in the Select Committee on the Panjáb Bill has led to numerous amendments in, or additions to, the Bill of minor importance. As examples we may refer to—

Section 27 (*e*) (distribution of executive powers and duties);

Section 28 (extraordinary powers of president and vice-president in case of emergency);

Sections 44 and 88 (powers to impose a scavenging-tax and to undertake the scavenging of private premises);

Sections 51-57 (special rules applicable to taxation of immoveable property);

Sections 60 and 61 (constitution and application of the municipal fund);

Sections 65-67 (provisions relating to municipal property);

Section 138 (settlement of disputes);

Sections 151-153 (relating to notices); and

Section 158 (which confers a power to exempt a municipality from any provisions of the Act which appear unsuitable to it).

This last section, we may observe, is specially necessary in view of the numerous and somewhat elaborate provisions now contained in Chapters VI and VII, some of which would probably be unsuitable in small municipalities.

6. We have now to notice such of the more important alterations of the Bill as are not accounted for by the foregoing remarks, or as otherwise seem to call for explanation.

7. Section 12 of the original Bill, which required a member of the municipal body to vacate his seat when appointed to a salaried municipal office, and section 29, which provided for the payment of fees to members for attendance at meetings, have been omitted; the former because it is not thought advisable that any person while a member of a committee should be appointed to a salaried office under the committee, and the latter because a municipal area can now comprise only a town and its immediate suburbs, and the members of the committee, being residents of that area and not having to travel any distance to the meetings, may reasonably be expected to give their services gratuitously.

8. We have, following the course taken in the Panjáb Bill, limited the rates to be imposed for water, lighting and scavenging only by providing (in effect) that they shall not exceed what is requisite to defray the cost of the services for which they are levied; and we have, as in the Panjáb Bill, provided that the proceeds of these rates shall be carried to the one municipal fund, separate accounts only being kept, instead of constituting separate funds.

9. We have substituted for section 47 of the original Bill, which required a municipal committee to make grants-in-aid to schools in accordance with such rules as the Government might make, a section (62) specifically appropriating to educational purposes the income for schools and all sums acquired by the committee in trust for educational purposes, and further requiring the assignment for educational purposes from the general municipal revenues of such sum annually, not being more than 5 per cent. of the gross annual income of the municipality, as the Local Government may fix.

This section has been suggested by the Chief Commissioner with the view of meeting practical difficulties which have occurred in British Burma, and is, in his opinion, indispensable for the purpose of carrying out the educational policy which has recently been established in that province, and under which the municipalities, whilst relieved of police-charges, have been required to provide for the maintenance of local schools. It will be observed that the section, while it compels the committee to devote a certain minimum of its funds to educational purposes, imposes no such restriction as might have been imposed under the original section as regards the particular objects on which the money shall be spent.

10. The Chief Commissioner has in an unofficial communication proposed certain modifications in and additions to the new provisions introduced from the Panjáb Bill in Chapters VI and VII. Most of these are of minor importance, and we have in general adopted them, omitting only such as appeared to us superfluous or unnecessarily stringent. In one instance we, however, have found it necessary to omit a section of considerable importance proposed by the Chief Commissioner, namely, a section similar to section 14 of Act XLVIII of 1860 giving a certain power of control over brothels and other disorderly houses; but that section we have omitted merely because we think the matter is one to be dealt with by the Magistrates and police rather than by a municipal committee.

11. The only other point which appears to call for notice in connection with this portion of the Bill is that we have substituted two sections (126 and 127) based on similar sections in the Public Health Act, 1875, for a section proposed by the Chief Commissioner, to guard against the spread of infectious diseases through the medium of public conveyances.

12. Sections 49 to 51 of the original Bill provided for the exercise by a municipal committee or its members of certain magisterial powers in nuisance cases. We have omitted these sections for the same reasons that have led to the omission of the corresponding sections of other Municipal Bills recently before the Council, namely, that a section like section 49 could have little practical effect, and that it is not desirable that the powers given by the other two sections should be conferred.

13. We have not thought it advisable to adopt a proposal made by the Chief Commissioner that the Local Government should be empowered to invest municipal officers with the powers of police-officers for the purposes of section 34 of the Police Act (V of 1861).

14. We have added a clause to section 138 providing that the powers of control over municipalities, conferred by that section on the Commissioner and Deputy Commissioner, shall, in the case of the municipalities of Rangoon, Moulmein, Akyab and Bassein, be exercised not by those officers but by the Local Government.

15. Lastly, we have to state that we have considered a proposal of the Chief Commissioner to the effect that the appropriation provisions of the Bill should be modified in such a manner as to admit of a municipal committee subscribing to a public band or contributing to fireworks or the like on great occasions. We have not adopted this proposal, because the objects in question appear to us to lie beyond the sphere of the purposes for which municipal taxation is raised in this country.

16. The publication ordered by the Council has been made as follows:—

In English.

Gazette.		*Date.*
Gazette of India	...	21st and 28th July, and 4th August, 1883.
British Burma Gazette	...	11th, 18th and 25th August, 1883.

In the Vernaculars.

Province.		*Language.*		*Date.*
British Burma	...	Burmese	...	25th August, and 1st and 8th September, 1883.

We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

C. P. ILBERT.

J. GIBBS.

T. C. HOPE.

J. W. QUINTON.

D. G. BARKLEY.

The 25th September, 1884.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Report of the Select Committee on the Bill to amend the law relating to Courts in the Panjáb was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 25th September, 1884:—

WE, the undersigned Members of the Select Committee to which the Bill to amend the law relating to Courts in the Panjáb was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

Extract from the *Tribune* of 5th July, 1884 [Paper No. 1].
Extract from the *Tribune* of 12th July, 1884 [Paper No. 2].
Extract from the *Hindoo Patriot* of 14th July, 1884 [Paper No. 3].
Extract from the *Tribune* of 19th July, 1884 [Paper No. 4].
Extract from the *Tribune* of 26th July, 1884 [Paper No. 5].
Extract from the *Tribune* of 2nd August, 1884 [Paper No. 6].
Extract from the *Tribune* of 9th August, 1884 [Paper No. 7].
Extract from the *Tribune* of 16th August, 1884 [Paper No. 8].
From Officiating Secretary to Government, Panjáb, No. 407S., dated 26th August, 1884, and enclosures [Papers No. 9].
Extract from the *Civil and Military Gazette* of 21st August, 1884 [Paper No. 10].
From President, Indian Association, Lahore, dated 20th August 1884, and enclosure [Papers No. 11].
Extract from the *Tribune* of 23rd August, 1884 [Paper No. 12].
Extract from the *Civil and Military Gazette* of 25th August, 1884 [Paper No. 13].
From Officiating Secretary to Government, Panjáb, No. 447S., dated 4th September, 1884, and enclosure [Papers No. 14].
From Officiating Secretary to Government, Panjáb, No. 445S., dated 6th September, 1884, and enclosure [Papers No. 15].
Endorsement by Officiating Under-Secretary to Government of India, Home Department, No. 1215, dated 15th September, 1884, and enclosures [Papers No. 16].

2. We have rearranged the provisions of the Bill in a manner which we trust will make them more readily intelligible; and in the following remarks we shall as far as possible take the sections in their new order.

CHAPTER II.

THE CHIEF COURT.

3. It will be observed that under the proviso to section 8, sub-section (1), a single Judge of the Chief Court is prohibited from revising or modifying any proceeding of a lower Court except an "order" within the meaning of the Code of Civil Procedure. The restriction thus imposed does not, we believe, differ to any important extent from that contained in the corresponding provision (section 21, proviso) of the original Bill, and it relieves us of the necessity of using the phrase "interlocutory order," to which some difficulty attached.

4. We have also modified the last sub-section of section 8 by placing in the hands of the Senior Judge the power of determining which Judges of the Chief Court shall sit alone and which shall constitute benches, instead of leaving the power to be delegated by the Court to such Judge as it might think fit.

5. We have in section 14 added to the matters in respect of which the Chief Court is empowered to make rules—

(1) the translation of papers filed in the Chief Court and copying or printing any such papers or translations, and the payment by parties of the expenses thereby incurred; and

(2) the procedure in cases where a person is entitled to inspect a record of any Court or obtain a copy of it, and the fees payable for searches and copies.

We believe that these matters have long been dealt with by the Chief Court at its discretion, and we think it well that the power to deal with them should be placed on a legal basis.

CHAPTER III.

THE SUBORDINATE CIVIL COURTS.

6. The enumeration of the subordinate Civil Courts in section 17* differs from that in section 4 of the original Bill, but the substantive changes involved are smaller than might at first sight be supposed.

* (*a*) The Divisional Court.
(*b*) The Court of the District Judge.
(*c*) The Court of the Subordinate Judge.
(*d*) The Court of the Munsif.

The Divisional Court corresponds, with certain modifications, which we shall presently have to notice, to the Divisional Court of the original Bill.

7. The District Judge corresponds to the Assistant Judge of the original Bill, but his position as controlling the administration of civil justice in the district in somewhat the same manner as the District Magistrate under the Criminal Procedure Code controls the administration of criminal justice is more clearly brought out; and (section 23) his Court is, subject to certain exceptions, made the District Court for the purposes of those Acts which confer special powers on a District Court.

8. The Subordinate Judge corresponds to the Subordinate Judge of the first class of the original Bill, but we have, instead of fixing a pecuniary limit to his jurisdiction as in section 36 of the original Bill, empowered the Local Government to do so (section 26). It will thus be in the power of the Local Government to limit the jurisdiction of a Subordinate Judge to any sum it thinks fit, or to confer upon him the unlimited jurisdiction exercised by a District Judge in original suits.

9. The Munsif of the amended Bill is intended to comprise the second, third and fourth classes of Subordinate Judges of the original Bill, and his powers in original suits have been dealt with in a manner similar to that just described; that is to say, it is left (section 26) to the Chief Court to invest each Munsif with such powers as it thinks fit, provided that the limit of value does not exceed Rs. 1,000, which was the limit for Subordinate Judges of the second class under section 36 of the original Bill.

10. It will be observed that section 19 introduces an important change as regards the constitution of the Divisional Court; but as that change will be more conveniently explained when we come to speak of the appellate jurisdictions, it only remains to notice here that we have in the proviso to section 21 put the restriction on the powers of one of several Judges of a Divisional Court sitting alone on the same footing as the similar restriction in the case of the Chief Court (*supra*, paragraph 3).

11. We have inserted a new section (29), similar to section 27 of the Bengal Courts Act, providing for the transfer to a Subordinate Judge or Munsif of business under Act XXVII of 1860, Act XL of 1858 and Act IX of 1861.

12. In the section (now 30) which empowers the Local Government to confer the powers of a Small Cause Court Judge on certain judicial officers, we have, as in other cases, omitted all minute specification of pecuniary limits, and simply provided that the Local Government may confer such powers as it thinks fit within the limit of Rs. 500.

13. In dealing with a Bill of this description it is impossible to overlook the difficulties which present themselves in connection with the valuation of certain classes of suits for the purpose of determining the original jurisdiction and the course of appeal. The question of the simplest mode of valuing suits for the recovery of land is at present under the consideration of the Government of India, and we have not accordingly felt ourselves called upon to take it up; but there are certain other classes of suits which in the absence of any special provision for their valuation would be left in a very unsatisfactory position, namely, suits the subject of which does not admit of valuation on any intelligible basis. Such suits are usually valued at some low figure, and consequently may be heard without any reference to their importance or difficulty by Courts of the inferior grades. The necessity for making some special provision for them on the present occasion is the greater, inasmuch as, under the present Bill, the course of appeal will depend to a greater extent than before on the valuation.

We have accordingly introduced a new section (32) providing that, where the subject-matter of suits of any class is such that in the opinion of the Chief Court it does not admit of being satisfactorily valued, the Chief Court may, with the previous sanction of the Local Government, direct that such suits shall be treated as if the subject-matter were of such value as the Chief Court thinks fit to specify in this behalf.

14. The only other provision of this chapter which appears to call for notice is section 38. As we have explained, it is intended that the District Judge should have the general control of the administration of civil justice throughout his district; but there may be cases, as *e.g.*, that of Kulu, in which it would be convenient to delegate this control to a Subordinate Judge in some outlying portion of the district in somewhat the same way as certain powers of a District Magistrate are delegated to a Sub-divisional Officer under the Code of Criminal Procedure; and accordingly a power to effect such a delegation has been taken.

CHAPTER IV.

APPELLATE JURISDICTION IN CIVIL CASES.

15. We have omitted the words in the opening section of this chapter which conferred a power to place other classes of suits on the same footing as mufassal small causes for the purposes of appeal, the object in view being now sufficiently met by the new definition of "small cause" (in section 3), which gives power to place small causes within the meaning of the Presidency-towns Small Cause Courts Act on the same footing as mufassal small causes.

16. We have, moreover, restricted this section, as we have the entire chapter, to appeals from decrees as distinguished from orders, the latter being sufficiently provided for by the Code of Civil Procedure.

17. The subject of further appeals, which is dealt with in the following section, is one which has given rise to much discussion, and which is surrounded on all sides with difficulties of a serious nature. We have given to it the most careful and prolonged consideration, and have come to the conclusion that the right of further appeal allowed by the Bill as introduced must be extended in some important particulars.

The Bill as introduced allowed a further appeal from the appellate decree of a Divisional Bench only in two cases, namely, if the Judges differed *or* if some question of law or custom or of general interest was involved; and in these cases it did not allow the appeal as a matter of right, but only if both Judges, or when one had left the Court, the remaining one, certified that the case was of sufficient importance to justify a further appeal. Under the Bill as now amended a further appeal will lie as a matter of right and without any certificate from a Divisional Bench in all cases where the Judges differ. There will, moreover, be a further appeal in all cases in which any one Judge certifies that there is a question of law or custom or general interest involved, and that the case is in his opinion of sufficient importance to justify a further appeal. And, lastly, there will be a further appeal in cases of a class altogether new and not contemplated in the original Bill, namely, where the value of the suit exceeds Rs. 500.

The proviso barring a further appeal in small causes when the value does not exceed Rs. 500 is retained.

18. We have, as already indicated, made another alteration which is of considerable importance, and which it is convenient to notice here.

The Bill as introduced required that the Divisional Courts should consist in all instances of at least two Judges, that except as expressly provided no decision should be reversed except by a bench of two Judges, and that the restrictions on further appeal which we have described should apply to all Divisional Courts. To that objection was taken on the ground that there may be a difficulty in finding in the Panjáb a sufficient number of competent officers to furnish two Judges for each of the Divisional Courts proposed. We need hardly say that if the objection were well-founded it would be a serious one, inasmuch as the strict limitations on the right of further appeal to the Chief Court imposed by the original Bill were framed in reliance on the strength of the Divisional Benches; and though those limitations have now been relaxed in the important particulars already described, the Bill still proceeds on the assumption that a Divisional Bench will be a stronger, more reliable and more satisfactory tribunal than the Court of a Commissioner ordinarily now is.

19. It is of course impossible for us to say whether the precise number of competent officers required to constitute Benches in all the proposed Divisions is to be found in the Panjáb at this moment, but we understand that the Lieutenant-Governor has no misgivings on the point, and we think it may be safely affirmed that the difficulty of procuring a sufficient number of competent officers for the Benches has been much exaggerated.

In order, however, to guard against every possibility of miscarriage, we have now modified the Bill in such a way that, if the Lieutenant-Governor finds, at any time, that the materials required for establishing a Bench in any particular Division are not immediately available, he can make the Divisional Court there consist of a single Judge (section 19), and in the event of his doing so a further appeal will, subject only to the proviso as to small causes contained in section 40, lie from that Judge's appellate decrees precisely as they lie at present from the appellate decrees of a Commissioner [section 40, clause (*b*)].

CHAPTER V.

REVENUE COURTS.

20. We have recast this chapter, assimilating it in form and arrangement to the portion of the Bill relating to Civil Courts, and supplying certain omissions in details, as, *e.g.*, provisions relating to ministerial officers, which it seems unnecessary to notice more particularly.

21. We have omitted from the list of suits cognizable by Revenue Courts given in the first section the so-called suits under section 40 of the Panjáb Tenancy Act, inasmuch as we find on reference to that Act that the proceedings in question are not suits but applications, and we think that the proper mode of dealing with them is to include them among the applications to be heard on the revenue side which are specified in section 42 of that Act, and from which they were apparently omitted by an oversight. We have accordingly added a section (75) to the Bill amending section 42 of the Tenancy Act so as to include them.

22. We have added to the list of suits cognizable by Revenue Courts "suits to determine disputes regarding boundaries of land" (*i.e.*, of agricultural land) "which have been fixed by

a Court or Revenue-officer." This addition has been advocated by several of the authorities consulted, and it appears to us to be a proper one, seeing that all that is ordinarily required for the decision of such disputes is the laying down on the ground of a boundary which is to be found in a map.

23. On the other hand, we have appended to the section a proviso which empowers the Local Government, after consulting the Chief Court, to retransfer to the Civil Courts the jurisdiction in any class of revenue cases cognizable in any part of the country where it appears desirable to do so.

24. We have for convenience sake divided the classes of suits into two groups, and at the instance of the Local Government included class (*d*), suits for ejectment of a tenant, in the group containing suits deemed to be of greater importance or difficulty.

25. We have in defining the powers of Assistant Commissioners and Tahsíldárs [section 46 (2)], following the same course as in the provisions relating to original civil jurisdiction, omitted all minute specification of pecuniary limits, and left it to the Local Government to fix those limits as it thinks fit.

26. We have for the same reason as in the preceding chapter omitted all reference to appeals from orders.

27. We have introduced a clause in the proviso to section 47, based on similar provisions in the Rent Laws of Bengal and the North-Western Provinces, giving power to bar appeals from decrees of certain classes of officers in money-suits when the amount involved does not exceed Rs. 100 and no question of importance, such as a question of title, is involved.

28. We have added a section (51) empowering the Local Government to confer on any person the judicial powers, original or appellate, of a Financial Commissioner, Commissioner or Deputy Commissioner under this chapter.

29. We have, in order further to provide a means of relieving the Revenue Courts of the necessity of disposing of particular matters which may be found to be more proper for consideration by the Civil Courts, introduced two new sections (54 and 55).

The first of these is copied with certain modifications from section 208A of the North-Western Provinces Rent Act, 1881, and is intended to take the place of section 49 of the original Bill, which has been the subject of adverse criticism. It empowers a Revenue Court, when it considers that any question in issue before it is more proper for decision by a Civil Court, to require any party to institute a suit in the Civil Court with a view to obtaining a decision on the question. If he fails to comply with the requisition, the Revenue Court is empowered to decide the question against him, but is not bound to do so, as under the corresponding provision of the North-Western Provinces Act. If the party institutes the suit in the Civil Court, the Revenue Court will follow the decision of that Court.

30. It has been suggested that any provision of this sort is superfluous, inasmuch as a Revenue Court being a Court of limited jurisdiction, and its decision in one case being accordingly, under section 13 of the Code of Civil Procedure, binding in other cases only to a limited extent, it may safely be compelled to decide all questions arising incidentally in any suit before it, even though they may be questions which would be obviously more proper for the consideration of a Civil Court.

To this view of the matter we are unable to assent.

31. It is undoubtedly true that in many cases, probably in the great majority of cases, it is best for all parties that the Revenue Court should take upon itself to decide all questions incidentally arising in the suit, even though some of them might be of a nature more proper for the consideration of a Civil Court. This would clearly be the right course for the Revenue Court to take when the question is a simple one and can be quickly disposed of, or when it is one not likely to arise subsequently between the parties in any other connection; but it seems equally clear that when, as must occasionally happen, some complicated and difficult question arises in a revenue-suit, and is certain to arise again between the parties unless it is finally settled, a Revenue Court ought to be allowed some discretion of the sort proposed. For, if some such discretion is not allowed, what must be the result? The question must be tried out at a great expenditure of time and money to all concerned by the Revenue Court, which *ex hypothesi* is not the best Court to try it. It may then go in appeal to the higher Revenue Courts, probably in the last resort to the Financial Commissioner, and, after all, as the decision obtained will not be binding except for certain limited purposes, the whole litigation may commence *de novo* and run a similar course through the Civil Courts.

It is in order to provide a means of avoiding scandals of this sort that we have introduced the section in question.

32. We are quite aware that the power it confers might be abused by an indolent Revenue-officer if he were free to resort to it at pleasure, but we have guarded against this by making the sanction of the immediately superior Court a condition precedent to its exercise.

33. Section 55, to which there is nothing corresponding in the original Bill, empowers the Financial Commissioner to refer to the Chief Court a point of law which he considers that Court is more competent to decide.

34. We trust that these two sections and the proviso which we have appended to section 45 (see *supra*, paragraph 23) will suffice to remove the apprehensions which have been expressed in some quarters that the Bill may force upon the Revenue Courts duties which they will be incompetent to discharge.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

35. We have omitted section 63 of the original Bill, which provided for consultations between the two Financial Commissioners, as it is unnecessary to provide for such a matter by legislative enactment and the proposal to do so gave rise to some misapprehension.

36. We have likewise omitted section 66 of the original Bill, which expressly prohibited a judicial officer from disposing of a case in which he might appear to be interested. We are aware that such provisions have long found a place in our Courts Acts, but we think the matter is one on which legislation may well be dispensed with, the general principles applicable to it being perfectly well understood.

37. Section 68 of the original Bill, which reproduced section 48 of the present Panjáb Courts Act, gave power to the Government to appoint a single Judge to exercise the Chief Court's superintending functions. This power has never been exercised, and we are informed that the Government have no desire to retain it. We have accordingly omitted the section.

38. Sections 73 and 74 of the original Bill, which provide for the enhancement of the court-fees upon applications to the Chief Court for revision under section 622 of the Code of Civil Procedure, were introduced with a view to discouraging such applications. We fully approve of their provisions and have retained them in the revised Bill. From statistics put before us by our hon'ble colleague Mr. Barkley it appears that such applications have of late been increasing to a formidable extent in the Panjáb; and, as observed by him when he asked for leave to introduce the Bill, they are certain to increase with greater rapidity if the provisions of the Bill, which give greater finality to the decisions of the Lower Appellate Courts, become law. Moreover, from the circumstance that only about one-sixth of the applications now made to the Chief Court are successful, it may be gathered that Panjáb litigants when debarred from appealing are tempted to incur the serious trouble and expense involved in making such applications, even where there may not be the slightest prospect of success. This appears to us to be a serious evil, and the only question has been whether the increase of the court-fee proposed in the original Bill would be enough to check it. The better opinion appears to us to be that it would have but a slight effect in that direction, and that nothing short of an alteration of section 622 of the Code as applied to the Panjáb will suffice.

39. We find that a considerable divergence of opinion has arisen between some of the highest Courts in the country as to the nature of the grounds required to support an application under that section. A full bench of the Allahabad High Court has held (I. L. R. 3 All. 203) that any grounds on which a second appeal would lie are sufficient. The practical result of this, as admitted by two of the learned Judges, is that section 622 of the Code gives a second appeal in all those cases in which the earlier sections of the Code expressly deny it. It may, no doubt, be said that the Court has a discretion under section 622 to interfere or not as it thinks fit, but we apprehend that as a rule a High Court holding the opinion just referred to, and finding what would be a good ground for special appeal made out, would be in practically the same position as if it were considering a special appeal under section 551.

40. A view which is probably more in accordance with that of those who framed the section was taken by a full bench of the Bombay High Court in a case reported in I. L. R. 7 Bom. 341. The conclusion to which the Court came in that case may be stated to be that the jurisdiction conferred by section 622 of the Code is an extraordinary jurisdiction to be exercised only in extraordinary cases, and that the precise circumstances under which it is to be exercised is left to the discretion of the Court and cannot be defined.

The question has not yet come before a full bench of the Panjáb Chief Court. It is impossible to predict what the result of its being fully considered by that Court would be; and, having regard to its intimate connection with the working of the present Bill, we do not think the matter should be left in uncertainty.

41. The root of the difficulty which has sprung up in connection with the section appears to lie in that portion of the wording introduced into the Code by Act XII of 1879, which empowers the High Court to interfere on the ground that the Lower Court has acted "illegally." The Allahabad High Court has construed this as justifying the High Court's interference whenever the Court below has erred on a question of law, and it is on this point mainly that the Bombay Court has dissented from the Allahabad decision. The divergence of opinion will no doubt have eventually to be met by an amendment of the Code, but the matter is not very pressing, where, as in most parts of the country at present, the proportion of cases in which appeals to the High Court are barred is comparatively small and a tendency to resort recklessly to the section has not developed itself among litigants.

42. In the Panjáb, on the contrary, the question is already pressing, and will become more so if this Bill is passed. We are therefore compelled to deal with it separately for that province; and the conclusion to which we have come after the most careful consideration, and having regard to the special circumstances of the Province and the peculiar features of the appellate system now proposed, is that the extraordinary jurisdiction conferred by section 622 of the Code should be exercisable only on the ground that the lower Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction with material irregularity. We propose, therefore (section 70 of the Bill), to limit the scope of section 622 of the Code in this way, and we believe that when so limited it will still be sufficiently wide to cover all cases which call for the exercise of revisional as distinguished from appellate jurisdiction.

43. The publication ordered by the Council has been made as follows :—

In English.

Gazette.	*Date.*
Gazette of India ...	... 5th, 12th and 19th July, 1884.
Panjáb Government Gazette ...	... 10th, 17th and 24th July, 1884.

In the Vernacular.

Province.	*Language.*	*Date.*
Panjáb	... Urdu	... 28th July, and 4th and 11th August, 1884.

We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

D. G. BARKLEY.
J. GIBBS.
C. P. ILBERT.
S. C. BAYLEY.
J. W. QUINTON.

The 25th September, 1884.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, NOVEMBER 1, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 23rd October, 1884 :—

No. 15 OF 1884.

A Bill to amend the Oudh Estates Act, 1869.

WHEREAS it is expedient to amend the Oudh Estates Act, 1869; It is hereby enacted as follows :— [I of 1869.

1. Subject to the saving in section 2 of this Act, for the definition of "registered" in section 2 of the said Act, there shall be deemed to have been substituted from the date of the passing of the said Act the following definition, namely :—

Amendment of definition of "registered" in section 2 of Act I of 1869.

"Registered." "'Registered' means—

"(*a*) in the case of a will, registered according to the law for the time being in force relating to the registration of assurances, or deposited with a Registrar according to the law for the time being in force relating to the deposit of wills; and

"(*b*) in the case of any other instrument, registered according to the law for the time being in force relating to the registration of assurances."

2. Nothing in section 1 shall affect any will—

Saving of certain wills.

(*a*) declared by a judicial decision pronounced before the twenty-third day of October, 1884, to be invalid on the ground that it was not registered in accordance with the provisions of the said Act; or

(*b*) of which the validity is being questioned on that ground in a suit commenced before the twenty-third day of October, 1884.

STATEMENT OF OBJECTS AND REASONS.

IT has recently been held by the Privy Council that a will that was deposited under the provisions of Part IX of Act VIII of 1871 was not "registered" within the meaning of section 13 and the definition in section 2 of the Oudh Estates Act 1869, which declares that "'registered' means registered according to the provisions of the rules relating to the registration of assurances for the time being in force in Oudh."

2. The consequences of this ruling, which affects also section 20 of the Act, where a similar provision occurs, are most important, since the procedure that is now pronounced to be inadequate to satisfy the requirements of the law has been constantly acted on. It is stated that the taluqdárs never suspected that the validity of wills formally deposited in the registration offices under sealed covers could be called in question. Moreover, it scarcely could have been intended that taluqdárs should be required to register their wills open, and it seems obvious that they cannot in the future be required to do so, which they will have to do under the decision of the Privy Council if the law remains unaltered.

3. Under these circumstances, it is considered advisable to amend Act I of 1869 so as to legalize the existing practice. This is done by the present Bill, and as the omission to fulfil the requirements of the law which has taken place in the past would seem to have been unintentional and due to a prevalent and hitherto undisputed misapprehension of its meaning, retrospective effect has been given to the amendment which covers all wills hitherto or at present only deposited and not registered, except wills already declared invalid by judicial decision or being questioned in a suit commenced before the date of the introduction of the Bill.

J. W. QUINTON.

The 23rd October, 1884.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 23rd October, 1884:—

No. 16 OF 1884.

A Bill to amend Act XXII of 1881.

XXII of 1881. WHEREAS it is expedient to amend the Excise Act, 1881; It is hereby enacted as follows:—

In the said Act, after section 34, the following section shall be inserted:—

"34A. The Local Government may, from time to time, invest any police-officers of or above the grade of head constable, either by name or in virtue of their offices, with the powers conferred on excise-officers by sections 27, 28 and 29 of this Act; and every officer so invested shall, for all purposes connected with the exercise of these powers, be deemed to be an excise-officer within the meaning of this Act."

Power to invest police-officers with powers of excise-officers.

STATEMENT OF OBJECTS AND REASONS.

SECTION 46 of Act X, 1871, corresponding to section 59 of Act XXI of 1856, enabled Local Governments to confer on certain police-officers powers of searching for and seizing spirituous liquors and intoxicating drugs and arresting persons found in possession of them. These powers have been conferred and exercised up to the present time in the North-Western Provinces and Oudh, and are essential to the efficiency of the excise-administration, as no separate establishments for the prevention of smuggling are maintained in those provinces, and the land-revenue officials have little leisure for excise-duties.

2. The excise law came under revision in 1881 and was re-enacted in a somewhat simpler form by Act XXII of that year.

Section 24 of that Act gives Collectors power to appoint persons by name or by virtue of their office to be officers for the collection of the excise revenue, but as police-officers are not specially mentioned among the persons to be so appointed, and as section 20 of Act V, 1861, precludes the exercise by them of any such authority, it has been held that they cannot be appointed to discharge excise functions, and that the power of so employing them conferred upon Local Governments by Act X, 1871, has been taken away by the Act of 1881.

3. This seems to have escaped notice when Act XXII of 1881 was passed. In the Statement of Objects and Reasons, in the Report of the Select Committee and in the speeches of the Hon'ble Member in charge of the Bill, nothing whatever is said of depriving the Local Governments of the power hitherto enjoyed by them of employing police-officers on excise-duties. Mr. Whitley Stokes, accounting for the omissions in the later Act, stated that they were provided for by other enactments or were fit subjects for executive orders. The omission now brought to light does not fall under either of these categories, and it is impossible to suppose that a power held to be necessary for the excise-administration was taken away from Local Governments by a side wind.

4. The Government of the North-Western Provinces and Oudh urge that the omission should now be rectified, and with this object the present Bill is introduced.

J. W. QUINTON.

The 23rd October, 1884.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, NOVEMBER 15, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 23rd October, 1884:—

No. 15 OF 1884.

A Bill to amend the Oudh Estates Act, 1869.

WHEREAS it is expedient to amend the Oudh Estates Act, 1869; It is hereby enacted as follows:— I of 1869.

1. Subject to the saving in section 2 of this Act, for the definition of "registered" in section 2 of the said Act, there shall be deemed to have been substituted from the date of the passing of the said Act the following definition, namely:— Amendment of definition of "registered" in section 2 of Act I of 1869.

"Registered." "'Registered' means—

"(*a*) in the case of a will, registered according to the law for the time being in force relating to the registration of assurances, or deposited with a Registrar according to the law for the time being in force relating to the deposit of wills; and

"(*b*) in the case of any other instrument, registered according to the law for the time being in force relating to the registration of assurances."

2. Nothing in section 1 shall affect any will— Saving of certain wills.

(*a*) declared by a judicial decision pronounced before the twenty-third day of October, 1884, to be invalid on the ground that it was not registered in accordance with the provisions of the said Act; or

(*b*) of which the validity is being questioned on that ground in a suit commenced before the twenty-third day of October, 1884.

STATEMENT OF OBJECTS AND REASONS.

IT has recently been held by the Privy Council that a will that was deposited under the provisions of Part IX of Act VIII of 1871 was not "registered" within the meaning of section 13 and the definition in section 2 of the Oudh Estates Act 1869, which declares that "'registered' means registered according to the provisions of the rules relating to the registration of assurances for the time being in force in Oudh."

2. The consequences of this ruling, which affects also section 20 of the Act, where a similar provision occurs, are most important, since the procedure that is now pronounced to be inadequate to satisfy the requirements of the law has been constantly acted on. It is stated that the taluqdárs never suspected that the validity of wills formally deposited in the registration offices under sealed covers could be called in question. Moreover, it scarcely could have been intended that taluqdárs should be required to register their wills open, and it seems obvious that they cannot in the future be required to do so, which they will have to do under the decision of the Privy Council if the law remains unaltered.

3. Under these circumstances, it is considered advisable to amend Act I of 1869 so as to legalize the existing practice. This is done by the present Bill, and as the omission to fulfil the requirements of the law which has taken place in the past would seem to have been unintentional and due to a prevalent and hitherto undisputed misapprehension of its meaning, retrospective effect has been given to the amendment which covers all wills hitherto or at present only deposited and not registered, except wills already declared invalid by judicial decision or being questioned in a suit commenced before the date of the introduction of the Bill.

J. W. QUINTON.

The 23rd October, 1884.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 23rd October, 1884 :—

No. 16 OF 1884.

A Bill to amend Act XXII of 1881.

XXII of 1881. WHEREAS it is expedient to amend the Excise Act, 1881; It is hereby enacted as follows :—

In the said Act, after section 34 [illegible] section shall be inserted :—

"34A. The Local Government may [illegible] to time, invest [illegible] officers of or above the rank of constable [illegible] name or in virtue of their offices, with the powers conferred on excise-officers by sections 27, 28 and 29 of this Act; and every officer so invested shall, for all purposes connected with the exercise of these powers, be deemed to be an excise-officer within the meaning of this Act."

Power to invest police-officers with powers of excise-officers.

STATEMENT OF OBJECTS AND REASONS.

SECTION 46 of Act X, 1871, corresponding to section 59 of Act XXI of 1856, enabled Local Governments to confer on certain police-officers powers of searching for and seizing spirituous liquors and intoxicating drugs and arresting persons found in possession of them. These powers have been conferred and exercised up to the present time in the North-Western Provinces and Oudh, and are essential to the efficiency of the excise-administration, as no separate establishments for the prevention of smuggling are maintained in those provinces, and the land-revenue officials have little leisure for excise-duties.

2. The excise law came under revision in 1881 and was re-enacted in a somewhat simpler form by Act XXII of that year.

Section 24 of that Act gives Collectors power to appoint persons by name or by virtue of their office to be officers for the collection of the excise revenue, but as police-officers are not specially mentioned among the persons to be so appointed, and as section 19 of Act V, 1861, precludes the exercise by them of any such authority, it has been held that they cannot be appointed to discharge excise functions, and that the power of so employing them conferred upon Local Governments by Act X, 1871, has been taken away by the Act of 1881.

3. This seems to have escaped notice when Act XXII of 1881 was passed. In the Statement of Objects and Reasons, in the Report of the Select Committee and in the speeches of the Hon'ble Member in charge of the Bill, nothing whatever is said of depriving the Local Governments of the power hitherto enjoyed by them of employing police-officers on excise-duties. Mr. Whitley Stokes, accounting for the omissions in the later Act, stated that they were provided for by other enactments or were fit subjects for executive orders. The omission now brought to light does not fall under either of these categories, and it is impossible to suppose that a power held to be necessary for the excise-administration was taken away from Local Governments by a side wind.

4. The Government of the North-Western Provinces and Oudh urge that the omission should now be rectified, and with this object the present Bill is introduced.

J. W. QUINTON.

The 23rd October, 1884.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, DECEMBER 6, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th December, 1884:—

No. 17 OF 1884.

A Bill to amend the law in force in the Pánch Mahál.

WHEREAS it is expedient that the law in force in the territory comprised in the Pánch Mahál should, on and from the first day of March, 1885, be the same as the law in force in the district of Kaira, in the Bombay Presidency, and that the said territory should, on and from that day, cease to be a scheduled district under the Scheduled Districts Act, 1874, and the Laws Local Extent Act, 1874; It is hereby enacted as follows:—

XIV of 1874.
XV of 1874.

Short title.

1. This Act may be called the Pánch Mahál Laws Act, 1884.

Laws of Kaira to apply.

2. (*1*) Save and except the enactments specified in the schedule hereto annexed, all enactments which, on the first day of March, 1885, are in force in the district of Kaira and not in the Pánch Mahál shall be deemed to come into force in the Pánch Mahál on that day.

Other laws repealed.

(*2*) All enactments which on that day are in force in the Pánch Mahál and not in the district of Kaira shall be deemed to be repealed on and from that day in the Pánch Mahál.

Pending proceedings.

3. All proceedings commenced before any authority in the Pánch Mahál before the first day of March, 1885, and still pending on that 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.

Territory to cease to be a scheduled district.

Partial repeal of Acts XIV and XV of 1874.

4. On and from the first day of March, 1885, the Pánch Mahál shall cease to be a scheduled district; and in Part II of the First Schedule to the Scheduled Districts Act, 1874, and in the same Part of the Sixth Schedule to the Laws Local Extent Act, 1874, the words "The Pánch Mahál" shall be repealed.

THE SCHEDULE.

ENACTMENTS EXCEPTED FROM THE OPERATION OF SECTION 2.

Acts of the Governor General in Council.

Number and year.	Title.	Extent of exception.
VIII of 1870 ...	For the prevention of the murder of female infants.	The whole.
XXI of 1881 ...	To amend the law providing for the relief of Thákurs in the districts of Broach and Kaira.	The whole.

Act of the Governor of Bombay in Council.

Number and year.	Title.	Extent of exception.
V of 1879 ...	To consolidate and amend the law relating to Revenue-officers and the land-revenue in the Presidency of Bombay.	Section 85 and last fifteen words of section 58.

STATEMENT OF OBJECTS AND REASONS.

THE territory called the Pánch Mahál, lying in the extreme east of Gujarát, in the Bombay Presidency, is a scheduled district under the Scheduled Districts Act, 1874, and the Laws Local Extent Act, 1874, and, though for revenue-purposes part of the Kaira District, it has hitherto, from its backward state and the poverty and ignorance of the people, been treated as a non-regulation district.

The Government of Bombay are, however, of opinion that the Pánch Mahál ought now to be placed upon a regulation footing, and at their suggestion the present Bill, which has been framed on the model of the Bánkí Laws Act, 1881, has been prepared. It assimilates the law in force in the Pánch Mahál to that in the Kaira District from the 1st March, 1885, excluding the Female Infanticide Act, 1870, the Broach and Kaira Thákurs' Relief Act, 1881, and the Bombay Land-revenue Code, 1879, section 85 and the last fifteen words of section 58, which the Government of Bombay desire should not be extended to the Pánch Mahál; it saves pending proceedings; and it declares that, from the above-mentioned date, the Pánch Mahál shall cease to be a scheduled district, repealing at the same time the reference to those Mahál which occurs in Part II of the first Schedule to the Scheduled Districts Act, 1874, and in the same Part of the Sixth Schedule to the Laws Local Extent Act, 1874.

The 23rd October, 1884. C. P. ILBERT.

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, DECEMBER 13, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th December, 1884:—

No. 17 of 1884.

A Bill to amend the law in force in the Pánch Mahál.

WHEREAS it is expedient that the law in force in the territory comprised in the Pánch Mahál should, on and from the first day of March, 1885, be the same as the law in force in the district of Kaira, in the Bombay Presidency, and that the said territory should, on and from that day, cease to be a scheduled district under the Scheduled Districts Act, 1874, and the Laws Local Extent Act, 1874; It is hereby enacted as follows:—

XIV of 1874. XV of 1874.

Short title.

1. This Act may be called the Pánch Mahál Laws Act, 1884.

Laws of Kaira to apply.

2. (*1*) Save and except the enactments specified in the schedule hereto annexed, all enactments which, on the first day of March, 1885, are in force in the district of Kaira and not in the Pánch Mahál shall be deemed to come into force in the Pánch Mahál on that day.

Other laws repealed.

(*2*) All enactments which on that day are in force in the Pánch Mahál and not in the district of Kaira shall be deemed to be repealed on and from that day in the Pánch Mahál.

Pending proceedings.

3. All proceedings commenced before any authority in the Pánch Mahál before the first day of March, 1885, and still pending on that 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.

Territory to cease to be a scheduled district.

4. On and from the first day of March, 1885, the Pánch Mahál shall cease to be a scheduled district; and in Part II of the First Schedule to the Scheduled Districts Act, 1874, and in the same Part of the Sixth Schedule to the Laws Local Extent Act, 1874, the words "The Pánch Mahál" shall be repealed.

Partial repeal of Acts XIV and XV of 1874.

XIV of 1874.

XV of 1874.

THE SCHEDULE.

ENACTMENTS EXCEPTED FROM THE OPERATION OF SECTION 2.

Acts of the Governor General in Council.

Number and year.	Title.	Extent of exception.
VIII of 1870 ...	For the prevention of the murder of female infants.	The whole.
XXI of 1881 ...	To amend the law providing for the relief of Thákurs in the districts of Broach and Kaira.	The whole.

Act of the Governor of Bombay in Council.

Number and year.	Title.	Extent of exception.
V of 1879 ...	To consolidate and amend the law relating to Revenue-officers and the land-revenue in the Presidency of Bombay.	Section 85 and last fifteen words of section 58.

STATEMENT OF OBJECTS AND REASONS.

THE territory called the **Pánch Mahál**s, lying in the extreme east of Gujarát, in the Bombay Presidency, is a scheduled district under the Scheduled Districts Act, 1874, and the Laws Local Extent Act, 1874, and, though for revenue-purposes part of the Kaira District, it has hitherto, from its backward state and the poverty and ignorance of the people, been treated as a non-regulation district.

The Government of Bombay are, however, of opinion that the Pánch Mahál**s** ought now to be placed upon a regulation footing, and at their suggestion the present Bill, which has been framed on the model of the Bánkí Laws Act, 1881, has been prepared. It assimilates the law in force in the Pánch Mahals to that in the Kaira District from the 1st March, 1885, excluding the Female Infanticide Act, 1870, the Broach and Kaira Thákurs' Relief Act, 1881, and the Bombay Land-revenue Code, 1879, section 85 and the last fifteen words of section 58, which the Government of Bombay desire should not be extended to the Pánch Mahál**s**; it saves pending proceedings; and it declares that, from the above-mentioned date, the Pánch Mahál**s** shall cease to be a scheduled district, repealing at the same time the reference to those Mahál**s** which occurs in Part II of the first Schedule to the Scheduled Districts Act, 1874, and in the same Part of the Sixth Schedule to the Laws Local Extent Act, 1874.

The 23rd October, 1884. C. P. ILBERT.

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, DECEMBER 20, 1884.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th December, 1884:—

No. 17 OF 1884.

*A Bill to amend the law in force in the Pánch Mahál**s**.*

WHEREAS it is expedient that the law in force in the territory comprised in the Pánch Mahál**s** should, on and from the first day of March, 1885, be the same as the law in force in the district of Kaira, in the Bombay Presidency, and that the said territory should, on and from that day, cease to be a scheduled district under the Scheduled Districts Act, 1874, and the Laws Local Extent Act, 1874; It is hereby enacted as follows :— XIV of 1874. XV of 1874.

Short title. 1. This Act may be called the Pánch Mahál**s** Laws Act, 1884.

Laws of Kaira to apply. 2. (*1*) Save and except the enactments specified in the schedule hereto annexed, all enactments which, on the first day of March, 1885, are in force in the district of Kaira and not in the Pánch Mahál**s** shall be deemed to come into force in the Pánch Mahál**s** on that day.

Other laws repealed. (*2*) All enactments which on that day are in force in the Pánch Mahál**s** and not in the district of Kaira shall be deemed to be repealed on and from that day in the Pánch Mahál**s**.

Pending proceedings. 3. All proceedings commenced before any authority in the Pánch Mahál**s** before the first day of March, 1885, and still pending on that 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.

Territory to cease to be a scheduled district. 4. On and from the first day of March, 1885, the Pánch Mahál**s** shall cease to be a scheduled district; and in Part II of the First Schedule to the Scheduled Districts Act, 1874, and in the same Part of the Sixth Schedule to the Laws Local Extent Act, 1874, the words "The Pánch Mahál**s**" shall be repealed.

Partial repeal of Acts XIV and XV of 1874. XIV of 1874. XV of 1874.

THE SCHEDULE.

ENACTMENTS EXCEPTED FROM THE OPERATION OF SECTION 2.

Acts of the Governor General in Council.

Number and year.	Title.	Extent of exception.
VIII of 1870 ...	For the prevention of the murder of female infants.	The whole.
XXI of 1881 ...	To amend the law providing for the relief of Thákurs in the districts of Broach and Kaira.	The whole.

Act of the Governor of Bombay in Council.

Number and year.	Title.	Extent of exception.
V of 1879 ...	To consolidate and amend the law relating to Revenue-officers and the land-revenue in the Presidency of Bombay.	Section 85 and last fifteen words of section 58.

STATEMENT OF OBJECTS AND REASONS.

THE territory called the Pánch Mahál, lying in the extreme east of Gujarát, in the Bombay Presidency, is a scheduled district under the Scheduled Districts Act, 1874, and the Laws Local Extent Act, 1874, and, though for revenue-purposes part of the Kaira District, it has hitherto, from its backward state and the poverty and ignorance of the people, been treated as a non-regulation district.

The Government of Bombay are, however, of opinion that the Pánch Mahál ought now to be placed upon a regulation footing, and at their suggestion the present Bill, which has been framed on the model of the Bánkí Laws Act, 1881, has been prepared. It assimilates the law in force in the Pánch Mahál to that in the Kaira District from the 1st March, 1885, excluding the Female Infanticide Act, 1870, the Broach and Kaira Thákurs' Relief Act, 1881, and the Bombay Land-revenue Code, 1879, section 85 and the last fifteen words of section 58, which the Government of Bombay desire should not be extended to the Pánch Mahál; it saves pending proceedings; and it declares that, from the above-mentioned date, the Pánch Mahál shall cease to be a scheduled district, repealing at the same time the reference to those Mahál which occurs in Part II of the first Schedule to the Scheduled Districts Act, 1874, and in the same Part of the Sixth Schedule to the Laws Local Extent Act, 1874.

The 23rd October, 1884.

C. P. ILBERT.

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th December, 1884, and was referred to a Select Committee :—

No. 18 OF 1884.

A Bill to repeal part of section 6 of the Indian Tariff Act, 1882, and to amend the Excise Act, 1881, and the Bengal Excise Act, 1878.

WHEREAS it is expedient to repeal part of section 6 of the Indian Tariff Act, 1882, and to amend section 7 of the Excise Act, 1881, and section 18 of the Bengal Excise Act, 1878; It is hereby enacted as follows :— XI of 1882. XXII of 1881. Beng. Act VII of 1878.

1. The part of section 6 of the Indian Tariff Act, 1882, beginning with the words "And whereas," down to and including the words "been paid," is repealed. XI of 1882. Repeal of part of section 6 of Act XI of 1882.

2. For clause (*a*) of section 7 of the Excise Act, 1881, the following clause shall be substituted :— XXII of 1881. Amendment of section 7 of Act XXII of 1881.

"(*a*) such duty as the Local Government may from time to time fix in respect of such spirit has been paid."

3. In section 18 of the Bengal Excise Act, 1878, for the words "at the rate leviable under any Tariff Act for the time being in force" the words "at such rate as the Local Government may from time to time fix in respect of such spirituous liquor" shall be substituted; but nothing in this section shall affect any Act passed after this Act comes into force by the Lieutenant-Governor of Bengal in Council. Beng. Act VII of 1878. Amendment of section 18 of Bengal Act VII of 1878.

4. The duty now fixed by the Local Government under section 6 of the Indian Tariff Act, 1882, as leviable on spirit manufactured in all or any of the distilleries situate in the territories under its administration, or in any part of such territories, shall, in places in which the Excise Act, 1881, or the Bengal Excise Act, 1878, is in force, be deemed to be the duty fixed by the Local Government under sections 7 and 18 of those Acts, as amended by this Act, respectively, XI of 1882. Saving of duties already fixed under section 6 of Act XI of 1882. XXII of 1881. Beng. Act VII of 1878.

STATEMENT OF OBJECTS AND REASONS.

THE Government of Madras recently submitted a draft Bill to consolidate and amend the Abkari law of the Presidency of Madras, for sanction to its introduction in the local Legislative Council, and, on examination of its provisions, it was found that two clauses of one of its sections, imposing a duty on liquor, were, as applied to spirit, *ultra vires* of the local legislature, as the mode of fixing the excise duty on spirit is determined by section 6 of the Indian Tariff Act, 1882. It was also feared that the penultimate clause of the latter section, by keeping in force, under the authority of the Governor General's Legislative Council, an unexplored mass of law existing on the 10th March, 1882, might render other provisions of that Bill *ultra vires*.

This in itself would make it necessary that legislation should be resorted to in the Council of the Governor General in order to prevent the Madras Bill from being declared invalid; and as, moreover, section 6 of the Tariff Act must seriously hamper any local legislature contemplating legislation like that proposed by the Madras Government, it is proposed to repeal that section, leaving it to the Local Governments to deal with the mode of fixing the duties of excise on spirit, under the other enactments locally in force, subject, so far as any discretion is allowed to them by those enactments, to the general executive control of the Government of India.

The present Bill has accordingly been prepared. It first repeals section 6 of the Tariff Act except the last clause amending section 1 of Act XVI of 1863, which Act is still in force. It then amends section 7 of the Excise Act, 1881, and section 18 of the Bengal Excise Act, 1878, which at present contain references to the provisions of section 6 of the Tariff Act, by omitting these references and conferring on the Local Governments concerned power to fix the duty payable in respect of country spirit. Lastly, in order to prevent any question being raised as to the effect of the repeal of section 6 of the Tariff Act, the Bill declares that duties already fixed by the Local Government under section 6 of the Tariff Act shall be deemed to be duties fixed by the Local Government under sections 7 and 18 of the Excise Act, 1881, and the Bengal Excise Act, 1878, as amended by this Act, respectively.

The 13th December 1884.

A. COLVIN.

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th December, 1884, and was referred to a Select Committee:—

No. 19 OF 1884.

A Bill to amend the law relating to the carriage of passengers by sea.

[Act II of 1860, preamble.] WHEREAS by section 99 of an Act of the Imperial Parliament called "the Passengers Act, 1855," it is enacted that "it shall be lawful for the Governor General of India in Council, from time to time, by any Act or Acts to be passed for that purpose, to declare that this Act or any part thereof shall apply to the carriage of passengers upon any voyage, from any ports or places within the territories of British India, to be specified in such Act or Acts, to any other places whatsoever, to be also specified in such Act or Acts;" and it is thereby also enacted that "on the passing of such Indian Act or Acts, and whilst the same shall remain in force, all such parts of this Act as shall be adopted therein shall apply to and extend to the carriage of passengers upon such voyages as in the said Indian Act or Acts shall be specified. The provisions of such Indian Act shall be enforced in all Her Majesty's possessions in like manner as the provisions of this Act may be enforced;"

18 & 19 Vic., c. 119.

[New.] And whereas certain parts of the said Act of Parliament were by Act II of 1860 (*to amend the law relating to the carriage of passengers by sea*) made applicable to the carriage of passengers upon certain specified voyages;

[New] And whereas by an Act of the Imperial Parliament called "the Passengers Act Amendment Act, 1863," certain parts of the Passengers Act, 1855, which were so made applicable have been amended, and it is provided that the said Acts of the Imperial Parliament shall be construed together as one Act;

26 & 27 Vic., c. 51.

18 & 19 Vic., c. 119.

[New.] And whereas it is expedient that the amendments so made in the Passengers Act, 1855, should also be made in the parts of that Act so made applicable, and it is also expedient to apply those parts so amended to the carriage of passengers upon certain voyages not specified in Act II of 1860;

18 & 19 Vic., c. 119.

It is hereby enacted as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Indian Sea Passengers Act, 1885: and [New.]

(*2*) It shall come into force on the first day of March, 1885. [New.]

Repeal of Act II of 1860.

2. On and from the day on which this Act comes into force, Act II of 1860 (*to amend the law relating to the carriage of passengers by sea*) shall be repealed. [New.]

Certain provisions of the Statutes made applicable to specified voyages from India.

3. The provisions contained in sections 4, 5 and 6 of this Act, and the schedule hereto annexed (being parts of the Passengers Act, 1855, as amended by the Passengers Act Amendment Act, 1863), are declared applicable to the carriage of passengers upon the following voyages, namely:— [Act II of 1860 a... Act VII... 1871, ss... and 24... [New.] 18 & 19 V... c. 119. 26 & 27 V... c. 51.

(*a*) Voyages from the ports of Calcutta, Madras and Bombay to the British Colonies of Mauritius, Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, Natal, St. Kitts, Nevis and Fiji; [New.]

(*b*) Voyages from the ports of Calcutta, Madras and Bombay to the French Colonies of Réunion, Martinique, Guadeloupe and its dependencies, and Guiana; [New.]

(*c*) Voyages from the ports of Calcutta, Madras and Bombay to the Netherlands colony of Dutch Guiana; [New.]

(*d*) Voyages from the ports of Calcutta, Madras and Bombay to the Danish colony of St. Croix; [New.]

(*e*) Voyages under the Native Passenger Ships Act, 1876, from Calcutta Madras, Bombay, Karáchí, Rangoon and other ports in British India to the Straits Settlements, to the protected Native States adjoining the Straits Settlements, to Australia, and to ports in the Red Sea or Persian Gulf. VIII of 1...

[Act II of 1860, s. 2.]

Governors or Consuls may pay expenses of passengers taken off passenger-ship.

4. If the passengers upon any such voyage as is specified in the last preceding section are taken off from the ship carrying such passengers, or are picked up at sea from any boat, raft or otherwise, it shall be lawful, if the port or place to which they shall be conveyed is in any of Her Majesty's colonial possessions, for the Governor of such colony, or for any person authorized by him for the purpose, or, if in any foreign country, for Her Majesty's Consular officer, at such port or place therein, to defray all or any part of the expenses thereby incurred.

[Act II of 1860, s. 3, 26 & 27 Vic., c. 51, s. 2.]

Governors or Consuls may send on passengers, if the master of the ship fail to do so.

5. If any passenger of any such passenger-ship as aforesaid, without any neglect or default of his own, finds himself within any colonial or foreign port, or place other than that for which the ship was originally bound, or at which he, or the Emigration Agent, or any public officer or other person on his behalf, has contracted that he should land, it shall be lawful for the Governor of the colony, or for any person authorized by him for the purpose or for Her Majesty's Consular officer at the foreign port or place, as the case may be, to forward the passenger to his intended destination, unless the master of the ship, within forty-eight hours of the arrival of such passenger, gives to the Governor or Consular officer, as the case may be, a written undertaking to forward or carry on within six weeks thereafter the passenger to his original destination, and unless the master accordingly forwards or carries him on within that period.

[Act II of 1860, s. 4, 26 & 27 Vic., c. 51, s. 3.]

Expenses incurred under sections 4 and 5 to be a Crown debt.

6. (*1*) All expenses incurred under the last two preceding sections, or either of them, by or by the authority of a Governor or Consular officer, or other person as therein respectively mentioned, including the cost of maintaining the passengers until forwarded to their destination, and of all necessary bedding, provisions and stores, shall become a debt to Her Majesty and Her successors from the owner, charterer and master of the ship, and shall be recoverable from them, or from any one or more of them, at the suit and for the use of Her Majesty, in like manner as in the case of other Crown debts.

(*2*) A certificate in the form given in the Schedule hereto annexed, or as near thereto as the circumstances of the case will admit, purporting to be under the hand of any such Governor or Consular officer (as the case may be), stating the total amount of the expenses, shall, in any suit or other proceeding for the recovery of the debt, be received in evidence without proof of the handwriting or of the official character of the Governor or Consular officer, and shall be deemed sufficient evidence of the amount of the expenses, and that the same were duly incurred;

[New.] nor shall it be necessary to adduce on behalf of Her Majesty any other evidence in support of the claim, but judgment shall pass for the Crown, with costs of suit, unless the defendant specially pleads and duly proves that the certificate is false or fraudulent, or specially pleads and duly proves any facts showing that the expenses were not duly incurred:

Provided, nevertheless, that in no case shall any larger sum be recovered on account of the expenses than a sum equal to twice the total amount of passage-money received or due to and recoverable by or on account of the owner, charterer or master of the passenger-ship or any of them from or on account of the whole number of passengers who may have embarked in the ship; which total amount of passage-money shall be proved by the defendant if he will have the advantage of this limitation of the debt: but if any such passengers are forwarded or conveyed to their intended destination under the provisions of the last preceding section, they shall not be entitled to the return of their passage-money, or to any compensation for loss of passage.

THE SCHEDULE.

[26 & 27 Vic., cap. 51, Sched. [New.]

Form of Governor's or Consul's Certificate of expenditure in the case of Passengers shipwrecked &c.

(*See section 6.*)

I hereby certify that acting under, and in conformity with, the provisions of the Indian Sea Passengers Act, 1885, I have defrayed the expenses incurred in rescuing, maintaining, supplying with necessary bedding, provisions and stores (*a*), and in forwarding to their destination passengers who were proceeding from to in the passenger-ship which was wrecked at sea, &c. (*b*).

And I further certify, for the purposes of the sixth section of the said Indian Sea Passengers Act, 1885, that the total amount of such expenses is , and that such expenses were duly incurred by me under the said Act.

Given under my hand this day of , 18 .

{ *Governor of &c.*, (or, as the case may be), *Her Britannic Majesty's Consul at* .

(*a*). *N. B.*—1. If more passengers were rescued than forwarded, or if bedding, &c., was not supplied, alter the certificate to suit the facts of the case.

(*b*). *N. B.*—2. State generally the nature of the disaster and where it occurred. But if the passengers were only left behind without any default of their own, state the fact accordingly.

STATEMENT OF OBJECTS AND REASONS.

ACT II of 1860 declares certain parts (namely, sections 52, 53 and 54) of the English Passengers Act, 1855 (18 & 19 Vic., cap. 119) to be applicable to the carriage of passengers upon voyages from the ports of Calcutta, Madras and Bombay to the colonies of Mauritius, Jamaica, British Guiana, Trinidad, St. Lucia and Grenada, and from ports in British India to ports in the Red Sea or Persian Gulf. The colonies mentioned were the places to which emigration was then lawful. Since 1860, emigration to the colonies of Fiji, Natal, Réunion, St. Croix, Guadeloupe, Martinique, Dutch Guiana, St. Vincent, Nevis and St. Kitts has been sanctioned. With respect, however, to voyages to places not specified in Act II of 1860, that

Act gives no power to any authority to recover expenses incurred in forwarding shipwrecked passengers to their destination and in maintaining them until they are so forwarded. At present, therefore, the voyages to which the Act does not apply are more numerous than those to which it does.

2. Again, the Act, as it stands at present, is, if strictly construed, inapplicable to the conditions under which emigration from India is usually conducted. Section 3 of the Act, following section 53 of the English Passengers Act, 1855, runs as follows:—"If any passenger * * * find himself within any colonial or foreign port or place other than that at which *he may have contracted to land*," &c. But as a rule, emigrants from India do not themselves contract with the owners or charterers of the vessels in which they emigrate. In all cases falling under the Indian Emigration Act VII of 1871 (or which may fall under the Indian Emigration Act XXI of 1883, when that Act is brought into force) the contract is made by a recruiter for the colony importing labour, under the supervision of the Protector of Emigrants. Emigrants despatched in this way are therefore technically excluded from the provisions of Act II of 1860. A similar difficulty appears to have arisen in England, and to have been met by an amendment of the law. Section 12 of the English Passengers Act Amendment Act, 1863 (26 & 27 Vic., cap. 51), repeals section 53 of the English Passengers Act, 1855, and section 15 of the former Act substitutes for the words "other than that at which he may have contracted to land" the words "other than that for which the ship was originally bound, or at which he or the Emigration Commissioners, or any public officer, or other person on his behalf, may have contracted that he should land".

3. These two defects in the Act came to notice in connection with the following occurrence. In the end of April last, the steamer *Laleham*, carrying emigrants from Calcutta to Dutch Guiana, grounded off Ceylon, and was compelled to land her passengers at Trincomalee. The *Laleham* returned to Calcutta, where she was examined by the Engineer-Surveyor to the port, and reported "unseaworthy and unfit to proceed to sea without serious danger to human life". The Agents of the *Laleham* at first proposed to substitute another vessel, but subsequently declined to do so, offering merely to have the *Laleham* repaired at Calcutta, and to fulfil her charter-party by re-embarking the coolies at Trincomalee and taking them on to Surinam.

The Advocate General of Bengal, on being consulted, was of opinion that no action could be taken under Act II of 1860, and that the matter would be governed by the charter-party. Surinam, he said, being in Dutch Guiana, is not a place to which Act II of 1860 applies. He thought further that the English Passengers Act Amendment Act, 1863, would be construed strictly, and according to such construction he did not think that the words of section 3 of Act II of 1860 would cover the break-down in a voyage to which that Act applied, in any case other than that in which the passenger had himself contracted.

Under these circumstances legislation seems necessary in order to bring Act II of 1860 into conformity with the present system of emigration and the English Passengers Act Amendment Act, 1863.

The present Bill has accordingly been prepared. It repeals and re-enacts Act II of 1860 with the necessary amendments. Section 3 of the present Bill declares the subsequent provisions of the Bill (being parts of the English Passenger Act, 1855, as amended by the Passengers Act Amendment Act, 1863) to be applicable to all voyages to certain specified colonies and places, which are, in fact, the colonies and places to which under the existing law emigration is now lawful or is likely to be legalized; and in sections 5 and 6 the amendments made by the English Passengers Act Amendment Act, 1863, in sections 53 and 54 of the English Passengers Act, 1855 (which formed sections 3 and 4 of Act II of 1860) are incorporated with some slight modifications so as to adapt them to this country.

The 5th December, 1884.

C. P. ILBERT.

D. FITZPATRICK,
Secretary to the Government 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 V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th December, 1884, and was referred to a Select Committee :—

No. 18 OF 1884.

A Bill to repeal part of section 6 of the Indian Tariff Act, 1882, and to amend the Excise Act, 1881, and the Bengal Excise Act, 1878.

WHEREAS it is expedient to repeal part of section 6 of the Indian Tariff Act, 1882, and to amend section 7 of the Excise Act, 1881, and section 18 of the Bengal Excise Act, 1878; It is hereby enacted as follows :—

XI of 1882. XXII of 1881. Beng. Act VII of 1878.

XI of 1882.

Repeal of part of section 6 of Act XI of 1882.

1. The part of section 6 of the Indian Tariff Act, 1882, beginning with the words "And whereas," down to and including the words "been paid," is repealed.

Amendment of section 7 of Act XXII of 1881.

2. For clause (*a*) of section 7 of the Excise Act, 1881, the following clause shall be substituted :—

"(*a*) such duty as the Local Government may from time to time fix in respect of such spirit has been paid."

Amendment of section 18 of Bengal Act VII of 1878.

3. In section 18 of the Bengal Excise Act, 1878, for the words "at the rate leviable under any Tariff Act for the time being in force" the words "at such rate as the Local Government may from time to time fix in respect of such spirituous liquor" shall be substituted; but nothing in this section shall affect any Act passed after this Act comes into force by the Lieutenant-Governor of Bengal in Council.

Saving of duties already fixed under section 6 of Act XI of 1882.

4. The duty now fixed by the Local Government under section 6 of the Indian Tariff Act, 1882, as leviable on spirit manufactured in all or any of the distilleries situate in the territories under its administration, or in any part of such territories, shall, in places in which the Excise Act, 1881, or the Bengal Excise Act, 1878, is in force, be deemed to be the duty fixed by the Local Government under sections 7 and 18 of those Acts, as amended by this Act, respectively,

STATEMENT OF OBJECTS AND REASONS.

THE Government of Madras recently submitted a draft Bill to consolidate and amend the Abkari law of the Presidency of Madras, for sanction to its introduction in the local Legislative Council, and, on examination of its provisions, it was found that two clauses of one of its sections, imposing a duty on liquor, were, as applied to spirit, *ultra vires* of the local legislature, as the mode of fixing the excise duty on spirit is determined by section 6 of the Indian Tariff Act, 1882. It was also feared that the penultimate clause of the latter section, by keeping in force, under the authority of the Governor General's Legislative Council, an unexplored mass of law existing on the 10th March, 1882, might render other provisions of that Bill *ultra vires*.

This in itself would make it necessary that legislation should be resorted to in the Council of the Governor General in order to prevent the Madras Bill from being declared invalid; and as

moreover, section 6 of the Tariff Act must seriously hamper any local legislature contemplating legislation like that proposed by the Madras Government, it is proposed to repeal that section, leaving it to the Local Governments to deal with the mode of fixing the duties of excise on spirit, under the other enactments locally in force, subject, so far as any discretion is allowed to them by those enactments, to the general executive control of the Government of India.

The present Bill has accordingly been prepared. It first repeals section 6 of the Tariff Act except the last clause amending section 1 of Act XVI of 1863, which Act is still in force. It then amends section 7 of the Excise Act, 1881, and section 18 of the Bengal Excise Act, 1878, which at present contain references to the provisions of section 6 of the Tariff Act, by omitting these references and conferring on the Local Governments concerned power to fix the duty payable in respect of country spirit. Lastly, in order to prevent any question being raised as to the effect of the repeal of section 6 of the Tariff Act, the Bill declares that duties already fixed by the Local Government under section 6 of the Tariff Act shall be deemed to be duties fixed by the Local Government under sections 7 and 18 of the Excise Act, 1881, and the Bengal Excise Act, 1878, as amended by this Act, respectively.

The 13th December 1884.

A. COLVIN.

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th December, 1884, and was referred to a Select Committee:—

No. 19 OF 1884.

A Bill to amend the law relating to the carriage of passengers by sea.

WHEREAS by section 99 of an Act of the Imperial Parliament called "the Passengers Act, 1855," it is enacted that "it shall be lawful for the Governor General of India in Council, from time to time, by any Act or Acts to be passed for that purpose, to declare that this Act or any part thereof shall apply to the carriage of passengers upon any voyage, from any ports or places within the territories of British India, to be specified in such Act or Acts, to any other places whatsoever, to be also specified in such Act or Acts;" and it is thereby also enacted that "on the passing of such Indian Act or Acts, and whilst the same shall remain in force, all such parts of this Act as shall be adopted therein shall apply to and extend to the carriage of passengers upon such voyages as in the said Indian Act or Acts shall be specified. The provisions of such Indian Act shall be enforced in all Her Majesty's possessions in like manner as the provisions of this Act may be enforced;"

And whereas certain parts of the said Act of Parliament were by Act II of 1860 (*to amend the law relating to the carriage of passengers by sea*) made applicable to the carriage of passengers upon certain specified voyages;

And whereas by an Act of the Imperial Parliament called "the Passengers Act Amendment Act, 1863," certain parts of the Passengers Act, 1855, which were so made applicable have been amended, and it is provided that the said Acts of the Imperial Parliament shall be construed together as one Act;

And whereas it is expedient that the amendments so made in the Passengers Act, 1855, should also be made in the parts of that Act so made applicable, and it is also expedient to apply those parts so amended to the carriage of passengers upon certain voyages not specified in Act II of 1860;

It is hereby enacted as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Indian Sea Passengers Act, 1885: and [New.]

(*2*) It shall come into force on the first day of March, 1885. [New.]

Repeal of Act II of 1860.

2. On and from the day on which this Act comes into force, Act II of 1860 (*to amend the law relating to the carriage of passengers by sea*) shall be repealed. [New.]

Certain provisions of the Statutes made applicable to specified voyages from India.

3. The provisions contained in sections 4, 5 and 6 of this Act, and the schedule hereto annexed (being parts of the Passengers Act, 1855, as amended by the Passengers Act Amendment Act, 1863), are declared applicable to the carriage of passengers upon the following voyages, namely:— [Act II of 1860 s. 1; Act VII of 1871, ss. 23 and 24.] [New.] 18 & 19 Vic., c. 119. 26 & 27 Vic., c. 51.

(*a*) Voyages from the ports of Calcutta, Madras and Bombay to the British Colonies of Mauritius, Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, Natal, St. Kitts, Nevis and Fiji; [New.]

(*b*) Voyages from the ports of Calcutta, Madras and Bombay to the French Colonies of Réunion, Martinique, Guadeloupe and its dependencies, and Guiana; [New.]

(*c*) Voyages from the ports of Calcutta, Madras and Bombay to the Netherlands colony of Dutch Guiana; [New.

(*d*) Voyages from the ports of Calcutta, Madras and Bombay to the Danish colony of St. Croix; [New.]

(*e*) Voyages under the Native Passenger Ships Act, 1876, from Calcutta Madras, Bombay, Karáchí, Rangoon and other ports in British India to the Straits Settlements, to the protected Native States adjoining the Straits Settlements, to Australia, and to ports in the Red Sea or Persian Gulf. VIII of 1876.

[Act II of 1860, s. 2.]

Governors or Consuls may pay expenses of passengers taken off passenger-ship.

4. If the passengers upon any such voyage as is specified in the last preceding section are taken off from the ship carrying such passengers, or are picked up at sea from any boat, raft or otherwise, it shall be lawful, if the port or place to which they shall be conveyed is in any of Her Majesty's colonial possessions, for the Governor of such colony, or for any person authorized by him for the purpose, or, if in any foreign country, for Her Majesty's Consular officer, at such port or place therein, to defray all or any part of the expenses thereby incurred.

[Act II of 1860, s. 3, 26 & 27 Vic., c. 51, New.]

Governors or Consuls may send on passengers, if the master of the ship fail to do so.

5. If any passenger of any such passenger-ship as aforesaid, without any neglect or default of his own, finds himself within any colonial or foreign port, or place other than that for which the ship was originally bound, or at which he, or the Emigration Agent, or any public officer or other person on his behalf, has contracted that he should land, it shall be lawful for the Governor of the colony, or for any person authorized by him for the purpose or for Her Majesty's Consular officer at the foreign port or place, as the case may be, to forward the passenger to his intended destination, unless the master of the ship, within forty-eight hours of the arrival of such passenger, gives to the Governor or Consular officer, as the case may be, a written undertaking to forward or carry on within six weeks thereafter the passenger to his original destination, and unless the master accordingly forwards or carries him on within that period.

[Act II of 1860, s. 4, 26 & 27 Vic., c. 51, New.]

Expenses incurred under sections 4 and 5 to be a Crown debt.

6. (*1*) All expenses incurred under the last two preceding sections, or either of them, by or by the authority of a Governor or Consular officer, or other person as therein respectively mentioned, including the cost of maintaining the passengers until forwarded to their destination, and of all necessary bedding, provisions and stores, shall become a debt to Her Majesty and Her successors from the owner, charterer and master of the ship, and shall be recoverable from them, or from any one or more of them, at the suit and for the use of Her Majesty, in like manner as in the case of other Crown debts.

[illegible]

(*2*) A certificate in the form given in the Schedule hereto annexed, or as near thereto as the circumstances of the case will admit, purporting to be under the hand of any such Governor or Consular officer (as the case may be), stating the total amount of the expenses, shall, in any suit or other proceeding for the recovery of the debt, be received in evidence without proof of the handwriting or of the official character of the Governor or Consular officer, and shall be deemed sufficient evidence of the amount of the expenses, and that the same were duly incurred;

nor shall it be necessary to adduce on behalf of Her Majesty any other evidence in support of the claim, but judgment shall pass for the Crown, with costs of suit, unless the defendant specially pleads and duly proves that the certificate is false or fraudulent, or specially pleads and duly proves any facts showing that the expenses were not duly incurred:

Provided, nevertheless, that in no case shall any larger sum be recovered on account of the expenses than a sum equal to twice the total amount of passage-money received or due to and recoverable by or on account of the owner, charterer or master of the passenger-ship or any of them from or on account of the whole number of passengers who may have embarked in the ship; which total amount of passage-money shall be proved by the defendant if he will have the advantage of this limitation of the debt: but if any such passengers are forwarded or conveyed to their intended destination under the provisions of the last preceding section, they shall not be entitled to the return of their passage-money, or to any compensation for loss of passage.

THE SCHEDULE.

Form of Governor's or Consul's Certificate of expenditure in the case of Passengers shipwrecked &c.

[illegible]

I hereby certify that acting under, and in conformity with, the provisions of the Indian Sea Passengers Act, 1885, I have defrayed the expenses incurred in rescuing, maintaining, supplying with necessary bedding, provisions and stores (*a*), and in forwarding to their destination passengers who were proceeding from to in the passenger-ship which was wrecked at sea, &c. (*b*).

And I further certify, for the purposes of the sixth section of the said Indian Sea Passengers Act, 1885, that the total amount of such expenses is , and that such expenses were duly incurred by me under the said Act.

Given under my hand this day of 18 .

{ *Governor of &c.*, (or, as the case may be). *Her Britannic Majesty's Consul at*

(*a*). *N. B.*—1. If more passengers were rescued than forwarded, or if bedding, &c., was not supplied, alter the certificate to suit the facts of the case.

(*b*). *N. B.*—2. State generally the nature of the disaster and where it occurred. But if the passengers were only left behind without any default of their own, state the fact accordingly.

STATEMENT OF OBJECTS AND REASONS.

ACT II of 1860 declares certain parts (namely, sections 52, 53 and 54) of the English Passengers Act, 1855 (18 & 19 Vic., cap. 119) to be applicable to the carriage of passengers upon voyages from the ports of Calcutta, Madras and Bombay to the colonies of Mauritius, Jamaica, British Guiana, Trinidad, St. Lucia and Grenada, and from ports in British India to ports in the Red Sea or Persian Gulf. The colonies mentioned were the places to which emigration was then lawful. Since 1860, emigration to the colonies of Fiji, Natal, Réunion, St. Croix, Guadeloupe, Martinique, Dutch Guiana, St. Vincent, Nevis and St. Kitts has been sanctioned. With respect, however, to voyages to places not specified in Act II of 1860, that

Act gives no power to any authority to recover expenses incurred in forwarding shipwrecked passengers to their destination and in maintaining them until they are so forwarded. At present, therefore, the voyages to which the Act does not apply are more numerous than those to which it does.

2. Again, the Act, as it stands at present, is, if strictly construed, inapplicable to the conditions under which emigration from India is usually conducted. Section 3 of the Act, following section 53 of the English Passengers Act, 1855, runs as follows:—"If any passenger * * * find himself within any colonial or foreign port or place other than that at which *he may have contracted to land*," &c. But as a rule, emigrants from India do not themselves contract with the owners or charterers of the vessels in which they emigrate. In all cases falling under the Indian Emigration Act VII of 1871 (or which may fall under the Indian Emigration Act XXI of 1883, when that Act is brought into force) the contract is made by a recruiter for the colony importing labour, under the supervision of the Protector of Emigrants. Emigrants despatched in this way are therefore technically excluded from the provisions of Act II of 1860. A similar difficulty appears to have arisen in England, and to have been met by an amendment of the law. Section 12 of the English Passengers Act Amendment Act, 1863 (26 & 27 Vic., cap. 51), repeals section 53 of the English Passengers Act, 1855, and section 15 of the former Act substitutes for the words "other than that at which he may have contracted to land" the words "other than that for which the ship was originally bound, or at which he or the Emigration Commissioners, or any public officer, or other person on his behalf, may have contracted that he should land".

3. These two defects in the Act came to notice in connection with the following occurrence. In the end of April last, the steamer *Laleham*, carrying emigrants from Calcutta to Dutch Guiana, grounded off Ceylon, and was compelled to land her passengers at Trincomalee. The *Laleham* returned to Calcutta, where she was examined by the Engineer-Surveyor to the port, and reported "unseaworthy and unfit to proceed to sea without serious danger to human life". The Agents of the *Laleham* at first proposed to substitute another vessel, but subsequently declined to do so, offering merely to have the *Laleham* repaired at Calcutta, and to fulfil her charter-party by re-embarking the coolies at Trincomalee and taking them on to Surinam.

The Advocate General of Bengal, on being consulted, was of opinion that no action could be taken under Act II of 1860, and that the matter would be governed by the charter-party. Surinam, he said, being in Dutch Guiana, is not a place to which Act II of 1860 applies. He thought further that the English Passengers Act Amendment Act, 1863, would be construed strictly, and according to such construction he did not think that the words of section 3 of Act II of 1860 would cover the break-down in a voyage to which that Act applied, in any case other than that in which the passenger had himself contracted.

Under these circumstances legislation seems necessary in order to bring Act II of 1860 into conformity with the present system of emigration and the English Passengers Act Amendment Act, 1863.

The present Bill has accordingly been prepared. It repeals and re-enacts Act II of 1860 with the necessary amendments. Section 3 of the present Bill declares the subsequent provisions of the Bill (being parts of the English Passenger Act, 1855, as amended by the Passengers Act Amendment Act, 1863) to be applicable to all voyages to certain specified colonies and places, which are, in fact, the colonies and places to which under the existing law emigration is now lawful or is likely to be legalized; and in sections 5 and 6 the amendments made by the English Passengers Act Amendment Act, 1863, in sections 53 and 54 of the English Passengers Act, 1855 (which formed sections 3 and 4 of Act II of 1860) are incorporated with some slight modifications so as to adapt them to this country.

The 5th December, 1884.

C. P. ILBERT.

D. FITZPATRICK,
Secretary to the Government of India.

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